139-540

139-540

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 226.

THE BROWN CHEMICAL COMPANY, APPELLANT,

vs.

CHRISTIAN F. G. MEYER, JOHN F. W. MEYER, EDWARD P. WILLIAMS, FREDERICK G. MEYER, THEODORE F. MEYER, GUSTAVE J. MEYER, AND EDWARD W. SINCLAIR.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED OCTOBER 13, 1887.

of machines. The finger rest to steady the presentation of the shoe by hand to a rotary cutter or burnisher was also known.

The complainant's patentee acquiesced in the rejection of his application for a patent on the finger rest in the reciprocating burnishing machine, and limited his claim to the combination of the burnishing tool (which was old), the finger rest (which was old), and the rest for the face of the sole (which as a stationary rest immediately below the tool was also old).

Can complainant now change that form of combination, which was in terms for three things, and was described to perform the following functions, viz., steady the finger, burnish the sole edge, and serve to rest the sole against, and convert his claim into a claim for the finger rest in combination with a reciprocating tool, by calling the "guard," an old and regular part of the tool, a "rest for the face of the sole," and this, too, when the part so called a rest does not rest at all, but is always in motion, and burnishes the sole edge or its corner wherever it touches it? If this were possible, then by this juggling with words the patentee obtains protection for a combination of only two elements, when the thing asked for in the patent was a combination of three elements; in other words, the question is, whether there would be invention in combining the finger rest with a reciprocating tool after it had been combined with a rotary tool in the same place and for the same purpose.

Respectfully submitted,

JOHN L. S. ROBERTS,

Counsel for Defendant.

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1 By the Honorable David J. Brewer, one of the judges of the circuit court of the United States for the eastern division of the eastern district of Missouri.

To Christian F. G. Meyer, John F. W. Meyer, Edward P. Williams, Frederick G. Meyer, Theodore F. Meyer, Gustave J. Meyer, and Edward W. Sinclair:

Whereas the "Brown Chemical Company" has lately appealed to the Supreme Court of the United States from a decree rendered in the circuit court of the United States for the eastern division of the eastern district of Missouri, made in favor of you, the said Christian F. G. Meyer, John F. W. Meyer, Edward P. Williams, Frederick G. Meyer, Theodore F. Meyer, Gustave J. Meyer, and Edward W. Sinclair, and has given the security required by law, you are therefore hereby cited to appear before the said Supreme Court at the city of Washington on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Leavenworth, in the State of Kansas, district of Kansas, in the eighth circuit, on the
2 26th day of August, in the year of our Lord one thousand eight hundred and eighty-seven.

DAVID J. BREWER,
Circuit Judge, 8th Circuit.

Service of the above citation this day acknowledged this August 29th, 1887.

BOYLE, ADAMS & McKEIGHAN,
Solicitors for Defendants.

[Endorsed:] No. 2651. United States circuit court, eastern div. of the eastern district of Missouri. Brown Chemical Co. *vs.* Christian F. G. Meyer *et al.* Citation. Deposit of 500 cash is as good as bond. D. J. B. Filed Aug. 29, 1887. A. P. Selby, clerk.

3 UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } *ss:*

In the Circuit Court of the United States in and for the Eastern Division of said Judicial District.

Be it remembered that on the twenty-sixth day of March, A. D. 1886, there was filed in the office of the clerk of the circuit court of the United States for the eastern district of Missouri a bill of complaint in words and figures following, to wit:

Bill of Complaint.

United States Circuit Court, Eastern District of Missouri.

To the honorable the judges of the circuit court of the United States for the eastern district of Missouri:

The Brown Chemical Company, a corporation created, organized, and existing under and by virtue of the laws of the State of Maryland and having its principal place of business at the city of Baltimore, in said State of Maryland, brings this its bill of complaint against Christian F. G. Meyer, John F. W. Meyer, Edward P. Williams, Frederick G. Meyer, Theodore F. Meyer, Gustave J. Meyer, and Edward W. Sinclair, doing business under the firm name of Meyer Brothers & Company at the city of St. Louis, in the State of Missouri, as wholesale druggists, and all of whom are citizens of said State of Missouri.

And thereupon your orator complains and says that for a period of many years last past it has been engaged in the preparation and sale of a certain medicine at the said city of Baltimore, and
4 that the medicine of its production has acquired and long enjoyed a very high reputation as a remedy for the prevention and cure of many diseases, and is sold in immense quantities, to your orator's great profit.

And your orator shows that many years since, about the year 1879, your orator devised, originated, adopted, and applied and used a certain label consisting of four sides or panels, the front one of which bears the representation of a lion's head, above which is printed the word "Brown's." In the mouth of the lion is suspended a rod or bar, having depending therefrom a banner or streamer bearing the words "Iron Bitters," printed in large, conspicuous letters, and separated by a circular design occupying the central field of the banner or flag. The three remaining panels have also printed thereon the words "Brown's Iron Bitters" in various places and embrace other matter, all arranged as shown in the label hereto attached and marked "genuine label."

And your orator further shows that through its efforts and by reason of large outlays of money in advertising, amounting to hundreds of thousands of dollars annually, and by reason of the great magnitude of its output, amounting annually to many thousands of bottles, all of which have borne a label consisting in part of the words "Brown's Iron Bitters," and by reason of its superior medicinal qualities and of the many cures of diseases effected thereby and the extensive use of said label the said designation, "Brown's Iron Bitters," has come to be associated with your orator's product, as it believes, to the exclusion of all others, so that those desiring your orator's medicine are in the habit of using the designation "Brown's Iron Bitters," which said designation is understood to mean your orator's medicine and it alone, and whenever the designation "Brown's Iron Bitters" is used it means a medicine

5 prepared and put up by your orator at said city of Baltimore, in the State of Maryland aforesaid, and it alone.

Your orator says that it believes and on information and belief alleges that the said designation, "Brown's Iron Bitters," came to be identified with your orator's product to the exclusion of all others, and that said designation is known and now used in all parts of the United States and by consumers generally when they desire to obtain the said preparation of your orator, by it popularized and made famous as aforesaid.

And your orator shows that prior to its adoption of said designation the same had never been employed in connection with any preparation or remedy, and it avers and will maintain that the same is to all intents and purposes its trade name or trade-mark; that it now has and has had since the date of the adoption by it of said trade name or trade-mark the right to the exclusive use thereof as a trade name or trade-mark for a medicinal preparation, and that no one except your orator now has or has ever had the right to use the same as a trade name or trade-mark for a medicinal preparation; and your orator avers that even if it has not the exclusive right to use the same, as it humbly insists and will maintain, the acts of the defendants, hereinafter complained of, are fraudulent and will be restrained by this honorable court.

Your orator further shows that the said defendants are engaged in business as wholesale druggists at the city of St. Louis, in said State of Missouri, and have long been cognizant of the high reputation of your orator's medicine and of the said designation, "Brown's Iron Bitters;" that being so cognizant and well knowing the rights of your orator in the premises, in order to injure your orator by diverting the profits of your orator in the sale of the genuine article and otherwise, the said defendants have at divers times, both

6 prior to and since the first day of January, A. D. 1885, and since your orator acquired its rights in the premises as aforesaid, at said city of St. Louis, in said State of Missouri aforesaid, willfully and fraudulently offered and sold medicine put up in bottles to which have been attached and applied labels containing the words "Brown's Iron Tonic," intended to indicate that the medicine contained in said bottles was that prepared and put up by your orator, which said preparation, your orator charges, on information and belief, so falsely marked and labeled and offered and sold by the said defendants and not made by your orator, the said defendants, at the time and place aforesaid, have fraudulently caused to be offered and sold and still cause to be offered and sold in large quantities as and for your orator's said preparation, to your orator's great loss and injury actually sustained.

And your orator charges, on information and belief, that large quantities of said "Brown's Iron Tonic" not made by your orator had been, through the act of the defendants and the use by them of said false and misleading name, "Brown's Iron Tonic," offered and sold as and for your orator's true and genuine "Brown's Iron Bitters," and mistaken therefor in many instances, to your orator's great loss and injury. Your orator charges that the defendants,

purpose was to sell the said simulated article upon the reputation established by your orator and as and for your orator's celebrated "Brown's Iron Bitters," all of which acts of the defendants are contrary to equity and good conscience and ought to be enjoined, and which your orator prays may be enjoined and other relief granted, as hereinafter prayed.

Your orator says that it cannot with certainty state the exact amount of profits diverted by the said defendants, nor can it correctly estimate the amount of damage and injury sustained by it by reason of the fraudulent acts complained of, but believes the
7 same to be large, and charges that it amounts to the full sum of ten thousand dollars, and prays that the said defendants may full and true disclosures make as to the same and may be decreed to account therefor in full, and otherwise to respond in damages as may appear to be equitable.

To the end, therefore, that your orator may obtain relief in the premises in this honorable court, where it alone can obtain relief, it humbly prays—

First. That Christian F. G. Meyer, John F. W. Meyer, Edward P. Williams, Frederic G. Meyer, Theodore F. Meyer, Gustave J. Meyer, and Edward W. Sinclair may be made defendants to this bill, and compelled to answer each and every allegation contained therein under oath the same and as fully as if directly interrogated as to each.

Second. That the said defendants may be compelled to render before a commission of this court a full, true, perfect, and complete account of all profits of every description made by the fraudulent use of any and all labels containing the words "Brown's Iron Tonic" as aforesaid or by the sale of goods to or unto which such labels may have been in anywise attached, and may be decreed to pay over to your orator the full and entire amount of such profits.

Third. That the said commission be also required to ascertain and report to this court what injury and loss have otherwise been inflicted upon your orator by the fraudulent acts complained of.

Fourth. That said defendants, Christian F. G. Meyer, John F. W. Meyer, Edward P. Williams, Frederick G. Meyer, Theodore F. Meyer, Gustave J. Meyer, and Edward W. Sinclair, their agents and servants, be forever enjoined and restrained from in any manner using any mark or marks, label or labels, containing the words "Brown's
8 Iron Tonic" in such manner and form as to mislead, and from otherwise selling or offering to sell any imitation or imitations of your orator's goods.

Fifth. That a restraining order may be issued without delay, directed to the defendants, Christian F. G. Meyer, John F. W. Meyer, Edward P. Williams, Frederick G. Meyer, Theodore F. Meyer, Gustave J. Meyer, and Edward W. Sinclair, aforesaid, their agents and servants, enjoining and restraining them during and until the determination of this suit from using any and all labels containing the said words, "Brown's Iron Tonic," and otherwise enjoining and restraining the fraudulent acts complained of.

Sixth. That said defendants be compelled to deliver and sur-

render to the marshal of this court or to some other person or persons to be appointed by this court any and all bottles of any and every form having upon them or attached thereto in any form or manner said label, or any unlawful imitation thereof whatsoever, and that the marshal or other person or persons be commanded or directed to efface and obliterate any and every representation or simulation of said label found upon or in anywise attached to bottles delivered and surrendered as aforesaid.

Seventh. And, finally, to the end that equity may be done and that the relief herein prayed for and all other relief that it may be righteous in the premises to administer may be afforded your orator, may it please your honors such relief fully to grant and to award against the said Christian F. G. Meyer, John F. W. Meyer, Edward P. Williams, Frederick G. Meyer, Theodore F. Meyer, Gustave J. Meyer, and Edward W. Sinclair a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, commanding them, on a day certain therein to be named and under a certain penalty, to be and appear in this honorable court, then and there to answer all and singular the premises and to stand to and perform and abide such further order, direction, and decree as may be made against them.

9 And your orator, as in duty bound, will ever pray, etc.

[SEAL.] BROWN CHEMICAL CO.,
By WILLIAM S. POWELL,
Treas. & Manager.

BENJ. F. REX,
Solicitor for Compl't.
ROWLAND COX,
Of Counsel for Compl't.

UNITED STATES OF AMERICA, }
City of Baltimore, State of Maryland. }

William S. Powell, being duly sworn, deposes and says as follows, to wit:

I am the treasurer and manager of the Brown Chemical Company, the corporation complainant named in the foregoing bill of complaint, which corporation is and has always been the sole manufacturer of Brown's Iron Bitters. I have read the foregoing bill of complaint and know the contents thereof. I know of my own knowledge that all the matter and things stated concerning the acts of the complainant are true, and as to all other matters and things I verily believe them to be true.

WILLIAM S. POWELL.

Sworn to and subscribed before me this 12th day of March, A. D. 1886.

[SEAL.] MURRAY HANSON,
Notary Public.

(Here follows label marked page 9½.)

10 UNITED STATES OF AMERICA, } *sct:*
Eastern District of Missouri, }

In the Circuit Court of the United States in and for said District.

The President of the United States of America to Christian F. G. Meyer, John F. W. Meyer, Edward P. Williams, Frederick G. Meyer, Theodore F. Meyer, Gustave J. Meyer, and Edward W. Sinclair (doing business under the firm name of Meyer Brothers & Co.), Greeting:

You are hereby commanded to be and appear at rules to be held at the office of the clerk of the circuit court of the United States in and for the eastern district of Missouri on the first Monday of May next, at the city of St. Louis, then and there to answer the bill of complaint of Brown Chemical Company, a corporation and citizen of the State of Maryland, filed against you on the 26th day of March, 1886. Hereof fail not.

Witness the Honorable Morrison R. Waite, Chief Justice
[SEAL.] of the Supreme Court of the United States, the 26th day of March, 1886.

Issued at office, in the city of St. Louis, under the seal of said circuit court, the day and year last aforesaid.

A. P. SELBY, *Clerk,*
By —— ——, *Deputy.*

MEM.—The defendants to enter their appearance in this suit in the clerk's office on or before the day at which the writ is returnable; otherwise the bill may be taken *pro confesso.*

A. P. SELBY, *Clerk,*
By —— ——, *Deputy.*

10½ [Endorsed:] No. 2651. United States circuit court, eastern district of Missouri. Brown Chemical Co. *vs.* Christian F. G. Meyer *et al.* Subpœna in chancery. Issued 26th day of March, A. D. 1886. Returnable to rules on first Monday, the 3d day, of May, 1886. Returned to the clerk's office and filed this 3d day of May, 1886. A. P. Selby, clerk.

UNITED STATES OF AMERICA, } *sct:*
Eastern District of Missouri, }

I have executed this writ by leaving a *a* copy thereof, with a true copy of the complaint thereto attached, with the within-named defendant, Christian F. G. Meyer; also by leaving a copy of said writ with the following-named defendants: Gustave J. Meyer, Edward W. Sinclair, and Theodore F. Mayer, at their place of business, # 6 & 8 N. 2d St., on the 29th day of March, A. D. 1886, at St. Louis, Mo., in above district.

J. E. D. COUZINS,
U. S. Marshal.
J. E. COUZINS, *Dep'ty.*

I certify that I have executed this writ by leaving a copy of same

with Frederick G. Meyer at his place of business, # 6 & 8 N. 2d St., St. Louis, Mo., on the 20th day of April, A. D. 1886, & further certify that the within-named defendants, Jno. F. W. Meyer & Edward P. Williams, cannot be found in above district.

J. E. D. COUZINS,
U. S. Marshal, Eastern District of Missouri,
By JAS. S. HICKS, *Deputy.*

Marshal's fees:

5 services, at $2.00	10 00
Mileage, 2 miles, at 6 cents	12
Total	$10 12

11 And afterwards, to wit, on the fourth day of October, A. D. 1886, there was filed in said cause an answer in words and figures following, to wit:

Answer.

In the Circuit Court of the United States, Eastern District of Missouri.

THE BROWN CHEMICAL COMPANY, Complainant,
vs.
C. F. G. MEYER *et al.*, Defendants.

The joint answer of Christian F. G. Meyer, John F. W. Meyer, Edward P. Williams, Frederick G. Meyer, Theodore F. Meyer, Gustave J. Meyer, and Edward W. Sinclair to the bill of complaint of The Brown Chemical Company, a corporation, complainant.

These defendants, now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereto or to so much thereof as these defendants are advised it is material or necessary for them make answer unto, say, etc.:

These defendants have no information sufficient to form a belief as to whether or not said complainant has for a period of many years last past been engaged in the preparation and sale of a certain medicine at the city of Baltimore, and therefore call for strict proof of same, although defendants are informed and believe that complainant has been engaged in the preparation and sale of a medicine; but these defendants, on information and belief, deny that said medicine has acquired or long enjoyed a very high or any particular reputation as a remedy for the prevention or cure of
12 many or any diseases, but whether or not it is sold in immense or any considerable quantities, to complainant's great profit, these defendants have no information sufficient to form a belief, although defendants believe that complainant has sold enough of said medicine to make some profit.

These defendants, further answering said bill of complaint, admit

on information and belief that said complainant, as alleged in said bill, has adopted, applied and used, and is using a certain label with the words and representations as described and set forth in said bill, but as to whether or not, as set forth in said bill, said label has been used since about the year 1879 or as to whether or not said complainant devised or originated said label these defendants have no information sufficient to form a belief, and therefore calls for strict proof of said allegations.

These defendants, further answering said bill of complaint, admit on information and belief that the designation "Brown's Iron Bitters" has come to be associated with complainant's medicine or product, but whether or not to the exclusion of all others defendants cannot say, as matter of law, but defendants say, as matter of fact, no other Brown's Iron Bitters are known to these defendants, and that those desiring complainant's medicine are in the habit of using the designation "Brown's Iron Bitters" with the understanding that it means complainant's medicine alone, since there are no other Brown's Iron Bitters made up or sold to the trade, as defendants are informed and believe, and that whenever the said designation Brown's Iron Bitters *are* used it means a medicine prepared and put up by complainant at the said city of Baltimore, in the State of Maryland.

These defendants, further answering said bill of complaint, say they have no information sufficient to form a belief as to whether or not said complainant has spent large sums of money in
13 advertising, amounting to hundreds of thousands annually, although defendants believe complainant has advertised extensively. Defendants admit that complainant's output has been of great magnitude, amounting to many thousand- of bottles annually, but as to whether or not said bottles have all borne a label consisting in part of the words "Brown's Iron Bitters," these defendants do not know, but believe and suppose it is so.

These defendants admit, on information and belief, that the said designation, "Brown's Iron Bitters," has come to be identified with said complainant's product, but not to the exclusion of all others as matter of legal right, although, as before stated, these defendants know of no other "Brown's Iron Bitters" in the trade. Defendants do not know whether or not said designation is known and is now used in all parts of the United States by consumers generally when they desire to obtain the said preparation of complainant, although these defendants know of no other preparation of the same designation.

These defendants, further answering said bill of complaint, say they have no information sufficient to form a belief as to whether or not said designation has ever been employed in connection with any other preparation or remedy, and therefore calls for strict proof of the same; but these defendants deny that the said designation is to all intents and purposes or to any intent or purpose complainant's trade name or trade-mark, or that said complainant now has or has ever had the exclusive right to the use of said designation as a trade name or trade-mark for a medicinal preparation or otherwise, or that no one except complainant has had or now has any right to

use said designation as a trade name or trade-mark for a medicinal preparation or otherwise; and these defendants, further answering, deny that they have done anything which is fraudulent or which will be restrained by this honorable court.

14 These defendants, further answering said bill of complaint, admit that they are engaged in business as wholesale druggists at the city of St. Louis, in the State of Missouri, but deny that they have been long or at all cognizant of the high reputation or any particular reputation of complainant's medicine, but admit that for some time they have known of the said designation, "Brown's Iron Bitters."

These defendants, further answering said bill of complaint, admit that prior to the commencement of this suit and as well since they had and have sold medicine put up in bottles to which have been attached and applied labels containing the words "Brown's Iron Tonic," but these defendants explicitly deny that such sales or any of them were or have been made in order to injure complainant by diverting any profits of complainant in the sale of its medicine or otherwise, or that such sales were fraudulently made, or that the bottles or the labels thereon containing the words "Brown's Iron Tonic" were intended by these defendants or any of them to indicate that the medicine contained in said bottles was prepared and put up by complainant; and these defendants deny that they ever have fraudulently offered or caused to be offered or sold, or that they still fraudulently offer or cause to be offered or sold in large or any quantities the said medicine so as aforesaid labelled "Brown's Iron Tonic," although these defendants admit that they have, as of right they might, offered and sold and still offer for sale said "Brown's Iron Tonic," as they have bought and sold complainant's said medicine, but without loss or injury to said complainant.

These defendants, further answering said bill of complaint, deny that large or small or any quantities of said Brown's Iron Tonic have been, through any act of these defendants or any of them or through any use by them of said designation of "Brown's Iron Tonic," at any time sold as or for complainant's Brown's

15 Iron Bitters, or mistaken therefor in any instance, or that said complainant has lost anything or been injured thereby

These defendants, further answering said bill of complaint, deny that it was their purpose to offer or sell said "Brown's Iron Tonic" upon any reputation established by complain-t or as or for complainant's said alleged celebrated "Brown's Iron Bitters;" and defendants deny that any of their acts in the premises have been or are contrary to equity or good conscience, or that they ought to be enjoined from the further sale of said "Brown's Iron Tonic."

These defendants, further answering said bill of complaint, state that while they claim and allege that the words "Brown's Iron Bitters" are not the subject of trade-mark or trade name, and that defendants or anybody else might legally use the same words, especially if, as in this case, the entire designation is not used, but is changed so as to exclude the idea of misleading or fraudulent purpose, yet these defendants have as good right as complainant pos-

sibly could have to the use of said entire designation, Brown's Iron Bitters, and as ground of this claim and as further answer to said bill of complaint these defendants aver, on information and belief, and charge the truth to be, that in or near the summer of 1881 one E. L. Brown, in connection with one C. J. Lincoln, commenced putting up and selling the said preparation, "Brown's Iron Tonic," at Little Rock, Arkansas, as a wholly distinct preparation from Brown's Iron Bitters, and without any intention or purpose to imitate complainant's said preparation, which at that time had not been advertised or sold to any great extent, as these defendants, on information and belief, aver. Subsequently to said date, as these defendants on information and belief aver, said Brown sold out his interest in said preparation to said C. J. Lincoln, who has since that time been put-
ting up, at Little Rock, Arkansas, said medicine and offering
16 it to the public, and these defendants have bought some of it and sold some of it, viz., four gross bottles, before March 24th, 1886, and since that date about seven gross bottles.

These defendants further aver that the said preparation, "Brown's Iron Tonic," as offered and sold by them and as well by said Brown and Lincoln, and since by said Lincoln, has been put up in cartons and bottles wholly differing in size, color, and appearance from said complainant's bottles, and with labels adapted and applied to the bottles wholly differing in size, color, appearance, and details from complainant's labels, which are enclosed in wrappers wholly different from said cartons of Brown's Iron Tonic, so that the public could not be misled or the complainant injured, which has always been very far from these defendants' purpose or object, and as well very far from said Brown's and Lincoln's purpose or object, as these defendants believe; these defendants exhibit and file with this answer a bottle of "Brown's Iron Tonic," with its carton and label, marked Exhibit C, and as well a label, wrapper, and bottle of complainant's preparation, marked Exhibit D, and pray that the court will consider them as part of this answer.

These defendants, further answering said bill of complaint, on information and belief aver and charge the truth to be that early in 1882 the said complainant entered into a correspondence with said Lincoln and Brown with respect to said Brown's Iron Tonic, and said Lincoln and Brown sent complainant a sample bottle of their tonic, wrapper, and label. Whereupon, as a result of said correspondence and examination, said complainant, in a letter to said Lincoln and Brown, expressed *themselves* as satisfied that said Brown's Iron Tonic did not conflict with said Brown's Iron Bitters; which letter was and is in words and figures as follows:

BALTIMORE, *August 28th*, 1882.

17 Mess. C. J. Lincoln & Co., Little Rock, Ark.

GENTLEMEN: Inclosing your invoice, thank you for your kind and satisfactory letter. We wish the Brown's Iron Tonic a success, as upon examination we cannot see where it can conflict with us except in the multiplicity of the Brown family.

Your fr'ds, BROWN CHEMICAL CO.

Said complainant has, as these defendants are informed and believe, ever since the date of said letter, with full knowledge of all the facts and after examination with respect to same, made no complaint of or objection to the putting up and sale of said "Brown's Iron Tonic" until just before this suit was brought, and so by its said letter and its long silence and acquiescence in the manufacture and sale of said "Brown's Iron Tonic" said complainant ought not in equity and good conscience, if for no other reason, to be granted in a court of equity any relief in the premises.

These defendants, further answering said bill of complaint, deny that the complainant has suffered by the acts of these defendants damage to the extent of ten thousand dollars or any other sum, or that said complainant has been done any wrong by these defendants or is entitled to any relief in the premises.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged; without this, that any other matter, cause, or thing in the complainant's said bill of complaint contained material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants;

18 all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

BOYLE, ADAMS & McKEIGHAN,
Solicitors for Defendants.

UNITED STATES OF AMERICA, }
State of Missouri, } ss:

Edward W. Sinclair, being duly sworn, deposes and says that he is one of the defendants in the foregoing answer; that he is acquainted with the contents of the same, and that the matters and things therein stated on the knowledge of said defendants are true, and those things stated on information and belief he believes to be true.

EDWARD W. SINCLAIR.

Subscribed and sworn to before me this 4th day of October, 1886.

L. L. WALBRIDGE,
Commissioner of U. S. Court, E. D. of Mo.

And afterwards, to wit, on the 11th day of October, A. D. 1886, there was filed in said cause an amendment to bill and answer with stipulation, to wit:

Said amendment to bill is in words and figures following, to wit:

Amendment to Bill.

United States Circuit Court, Eastern District of Missouri.

BROWN CHEMICAL COMPANY
vs.
CHRISTIAN F. G. MEYER *et al.* } In Equity.

And now comes the complainant and amends its said bill of complaint by eliminating therefrom lines seventeen to twenty-six, inclusive, on page one, and inserting in its stead the following:

"And thereupon your orator complains and says that about the year 1879 William H. Brown, Alexander E. Brown, and William S. Powell, all of the city of Baltimore, in the county of Baltimore and State of Maryland, were associated in business as partners under the firm name of Brown Chemical Company and engaged in business under said firm name at said city of Baltimore; and the business of said firm was carried on continuously without interruption until the month of April, 1884, when the members of said firm and other parties became the incorporators of Brown Chemical Company, your orator, the complainant herein; and your orator was then, to wit, in or about the month of April, 1884, created and became a corporation under the laws of the State of Maryland aforesaid and has continued to be and is now a corporation, as aforesaid.

"Your orator shows unto your honors that at the time of its incorporation the said firm, Brown Chemical Company, assigned, transferred, and made over to your orator in due form of law the business of said firm, Brown Chemical Company, together with all the rights of every nature and description thereto appertaining, including the good will thereof and the right to the use of the trademark or trade name 'Brown's Iron Bitters,' and all of its trademarks, formulas, and every other right whatsoever; and the business of said firm has been since continued and carried on by your orator the same in every way as it had been carried on before the month of April, 1884, when the firm, Brown Chemical Company, was changed, as hereinbefore set forth, into a corporation of the same name, so that, to all intents and purposes, your orator avers the business of Brown Chemical Company has been continued without interruption from the year 1879 to the present time.

"Your orator says that heretofore and prior to the first day of July, 1879, said firm of Brown Chemical Company was engaged in business in said city of Baltimore in the manufacture and sale of a medicinal preparation of great value as a remedy for numerous diseases. For the purpose of distinguishing the preparation manufactured and sold by it as aforesaid said firm devised, originated, adopted, applied, and used a certain label consisting of four sides or."

By inserting after the word "efforts" at the end of line twelve

on the second page the following: "And that of said firm, Brown Chemical Company."

By inserting after the word "product" on the twenty-second line of page two the following: "And that of said firm, Brown Chemical Company."

By inserting — the word "product" at the end of line four on page three the following: "And that of its predecessors, said firm of Brown Chemical Company."

By eliminating the tenth line on page three and substituting in its stead the following: "And your orator shows that prior to the adoption by said firm, Brown Chemical Company, your orator's predecessors, of."

By inserting after the word "by" on line fifteen on page three the following (the word "it" being eliminated): "Its predecessors as aforesaid."

REX & MOODY,
Solicitors for Complainant.

Said amendment to the answer is in words and figures following, to wit:

21 *Amendment to Answer.*

United States Circuit Court, Eastern District of Missouri.

BROWN CHEMICAL COMPANY
vs.
CHRISTIAN F. G. MEYER. } In Equity.

And now come the defendants and amend their answer by inserting after the first paragraph thereof the following:

"The defendants have no personal knowledge as to the organization of the firm of Brown Chemical Company referred to in the bill of complaint, but believe it to be true, and therefore do not ask for proof of same, but desire their original answer as to complainants having devised, originated, adopted, applied, and used said label to stand as applicable to the allegation of amendments to bill changing the application of said new to the old firm of Brown Chemical Company, and in like manner as to any other recital or other changes made by said amendments."

Said stipulation is in words and figures following, to wit:

Stipulation as to Amendment of Bill & Answer.

United States Circuit Court, Eastern District of Missouri.

BROWN CHEMICAL COMPANY
vs.
CHRISTIAN F. G. MEYER *et al.* } In Equity.

It is agreed by counsel that the amendments to the bill of complaint and answer hereto annexed may be entered *nunc pro tunc*, and

that they shall have the same force and effect as if they had been a part of the original bill of complaint and answer; and it is agreed that the said answer shall stand as formally good as if specifically directed to the changes made in the bill by the said amendments to the same.

22

REX & MOODY,
Solicitors for Complainant.
BOYLE, ADAMS & McKEIGHAN,
Solicitors for Defendants.

And on the same day, to wit, the 11th day of October, A. D. 1886, there was filed in said cause a replication in words and figures following, to wit:

Replication.

United States Circuit Court, Eastern District of Missouri.

BROWN CHEMICAL COMPANY
vs.
CHRISTIAN F. G. MEYER *et al.* } In Equity.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

REX & MOODY,
Solicitors for Complainant.

23 And afterwards, to wit, on the 27th day of November, A. D. 1886, there was filed in said cause a stipulation in words and figures following, to wit:

Stipulation as to Facts.

United States Circuit Court, Eastern District of Missouri.

BROWN CHEMICAL CO.
vs.
CHRISTIAN F. G. MEYER *et al.* } In Equity.

The defendants in the above-entitled case hereby stipulate and agree that for the purposes of said case the following facts may be taken as admitted and waive proof thereof, viz:

1. That the complainant is a corporation and was organized under

the laws of the State of Maryland at the time and in the manner stated in its amended bill of complaint.

2. That in or about the month of April, 1884, the firm of Brown Chemical Co. mentioned in said amended bill transferred to the complainant all the rights of said firm, including the good will thereof and the right to use the name Brown's Iron Bitters and every other right whatsoever as fully as said firm could.

St. Louis, November 20th, 1886.

BOYLE, ADAMS & McKEIGHAN,
D'f'ts' Solicitors.

And afterwards, to wit, on the first day of June, A. D. 1887, the following, among other, proceedings were had and appear of record in said cause, to wit:

Case Called, Heard, and Submitted.

BROWN CHEMICAL COMPANY, Complainant,
vs.
CHRISTIAN F. G. MEYER *et al.*, Defendants. } 2651.

24 Now comes Rowland Cox and enters his appearance as solicitor for complainant.

And thereupon this cause came on to be heard and was submitted, with leave to defendants to June 14th to file brief and seven days thereafter for complainant to file brief in reply.

And afterwards, to wit, on the thirtieth day of June, A. D. 1887, the following further proceedings were had and appear of record in said cause, to wit:

Decree.

BROWN CHEMICAL COMPANY, Complainant,
vs.
CHRISTIAN F. G. MEYER *et al.*, Defendants. } 2651.

Now come the parties, by their solicitors, complainant by Rex and Cox and defendant by Boyle, Adams & McKeighan, and this cause having been heretofore submitted to the court upon the pleadings, proofs, and briefs of counsel and being fully advised of and concerning the premises—

It is ordered, adjudged, and decreed by the court that the bill of complaint herein be, and the same is hereby, dismissed at complainant's costs.

It is further ordered that a fee bill or execution issue therefor.

And afterwards, to wit, on the 18th day of July, A. D. 1887, the following further proceedings were had and appear of record in said cause, to wit:

Petition for Appeal Filed.

BROWN CHEMICAL COMPANY, Complainant,
vs.
C. F. G. MEYER *et al.*, Defendants. } 2651.

Now comes complainant, by solicitor, and files petition for appeal herein.

25 Said petition for appeal is in words and figures following, to wit:

Petition for Appeal.

United States Circuit Court, Eastern Division of the Eastern District of Missouri.

BROWN CHEMICAL CO.
vs.
CHRISTIAN F. G. MEYER, JOHN F. W. MEYER, Edward P. Williams, Frederick G. Meyer, Theodore F. Meyer, Gustave J. Meyer, and Edward W. Sinclair. } In Equity. No. 2651.

The above-named complainant, conceiving itself aggrieved by the final decree dismissing its bill of complaint, entered on the 30th day of June, 1887, in the above-entitled cause, doth hereby appeal therefrom to the Supreme Court of the United States, and it prays that its appeal may be allowed and a citation granted, directed to the above-named defendants and commanding them to appear before the Supreme Court of the United States, to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record, proceedings, and evidence in said cause, duly authenticated, may be sent to said Supreme Court.

BENJ. F. REX,
Solicitor for Complainant.

And afterwards, to wit, on the 22nd day of July, A. D. 1887, the following further proceedings were had and appear of

26 record in said cause, to wit:

Appeal Allowed.

BROWN CHEMICAL COMPANY, Complainant,
vs.
C. F. G. MEYER *et al.*, Defendants. } 2651.

On motion of complainant, by its solicitor, it is ordered that a appeal be allowed herein on complainant giving security in the su of five hundred dollars, to be approved by the court or one of th judges thereof.

And afterwards, to wit, on the 29th day of August, A. D. 1887, the following further proceedings were had and appear of record in said cause, to wit:

Citation Signed.

BROWN CHEMICAL COMPANY, Complainant,
vs.
C. F. G. MEYER *et al.*, Defendants. } 2651.

At chambers, before Honorable David J. Brewer, circuit judge.

Now comes the complainant, by its solicitor, and presents its citation, which is signed and made part of the record herein.

And said claimant having deposited in court the sum of five hundred dollars, it is now ordered, on motion of complainant's solicitor, that said sum be accepted in lieu of an appeal bond heretofore ordered to be given in said cause.

It is further ordered that the clerk of this court make out and certify to the Supreme Court of the United States a true and complete transcript of the record and proceedings in this cause.

And afterwards, to wit, on the seventh day of September, A. D. 1887, there was filed in said cause a stipulation as to exhibits in words and figures following, to wit:

27 *Stipulation as to Exhibits.*

In the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

BROWN CHEMICAL COMPANY, Complainant,
vs.
CHRISTIAN F. G. MEYER *et al.*, Defendants. } In Equity. No. 2651.

Whereas the complainant in the above-entitled cause has appealed from the decree heretofore entered therein by said United States circuit court to the Supreme Court of the United States, it is hereby stipulated and agreed by counsel as follows:

1. That all bottles of bitters or tonic filed as exhibits in said cause, either with the pleadings or depositions, may be transmitted to said Supreme Court by the clerk of said circuit court with the copy of the record in said cause.

2. That all exhibits attached either to the pleadings or depositions filed in said cause may be detached therefrom, and, together with all other printed or written exhibits filed in said cause, may be attached in place of copies to the copy of the record in said cause made by said clerk for transmission to said Supreme Court, and may be transmitted therewith by said clerk to said court.

BOYLE, ADAMS & McKEIGHAN,
Solicitors for Def'ts.
BENJ. F. REX, *Solicitor for Compl'nt.*

27¼ *Stipulation as to Advertisement.*

United States Circuit Court, Eastern Division of the Eastern District of Mo.

BROWN CHEMICAL CO.
vs.
C. F. G. MEYER *et al.* } In Equity.

"B. I. T.

BROWN'S IRON TONIC.

Brown's Iron Tonic—'The Old Reliable'—is the *ne plus ultra* of Iron Medicines. It is especially adapted to the Southern States. It is the only Iron Tonic that acts at the same time, with equal vigor, on both the Liver and the Blood For

GENERAL DEBILITY,
TORPID LIVER,
POOR BLOOD,
SICK HEADACHE,
DYSPEPSIA,
CHRONIC CHILLS,

And All Malarial Blood Poisoning.

It is precisely the very best medicine there is. Physicians everywhere unhesitatingly recommend BROWN'S IRON TONIC. It is richer in available Iron than any other Iron Remedy, and it is as pleasant to take as the best of wine. It is put up in a most attractive package, and the bottle holds more than any other Iron Medicine.

For sale, at $6 per Dozen, by The Tompson Drug Company.

C. J. LINCOLN,
Sole Proprietor, Little Rock, Ark."

From the Texas-Mexican Druggist, Galveston, Tex., March.

It is agreed by counsel that the above is a true copy of an advertisement inserted by C. J. Lincoln in the Texas-Mexican
27½ Druggist and published in said paper at his instance and request, and that said copy may be read in evidence in this case by the complainant without proof of said advertisement's insertion or publication.

REX & MOODY,
Solicitors for Complainant.
BOYLE, ADAMS & McKEIGHAN,
Solicitors for Defendants.

Endorsed: "No. 2651. United States circuit court, E. div. E. district of Mo. Brown Chemical Co. *vs.* C. F. G. Meyer *et al.* Stipulation as to advertisement. Filed May 11, 1887. A. P. Selby, clerk."

28 In the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

BROWN CHEMICAL COMPANY
vs.
C. F. G. MEYER *et al.*
} In Equity. No. 2651.

Opinion of the Court, June 30th, 1887.

THAYER, *D. J.:*

This case has been elaborately argued. Under the pleadings and proofs I regard it as in substance a proceeding to restrain unfair competition in trade.

It is not a case of infringement of a trade-mark, because the testimony does not show that defendant has appropriated any symbol, device, or word first adopted by complainant which can be regarded as constituting a trade-mark.

Since the year 1879 it appears that complainant has been manufacturing a remedy known and labelled as "Brown's Iron Bitters" at Baltimore, Md. Defendants, who are wholesale druggists at St. Louis, Mo., for some time past have purchased of Lincoln & Co., of Little Rock, Arkansas, and have been selling in the usual course of business an article known as "Brown's Iron Tonic." Brown's Iron Bitters was originally compounded by a man by the name of Brown, of Baltimore, Md., from whom the complainant corporation takes its name and its title to the recipe for the bitters.

A man by the name of E. L. Brown, residing at Little Rock, Arkansas, and at the time a member of the firm of Lincoln & Co., devised the formula for "Brown's Iron Tonic" in the fall of 1881 and gave the medicine his name. Brown's Iron Tonic does
29 not appear to have entered the market extensively until the spring of 1882, at which time complainant had spent many thousand dollars in advertising Brown's Iron Bitters and the article was in great demand.

Complainant's counsel does not in express terms assert that the words "Brown's Iron Bitters," either singly or collectively, constitute a trade-mark. Such a proposition, if asserted, could not be maintained, as it goes without saying that the words "Iron Bitters" are merely descriptive of an ingredient and quality of the article, and for that reason cannot be appropriated as a trade-mark.

Canal Co. *vs.* Clark, 13 Wall., 323.
Amoskeag M'n'f't'g Co. *vs.* Spear, 2nd Sandford, ch. 599.
Raggett *vs.* Findlater, Law Rep., 17 Equity, 29.
Manufacturing Co. *vs.* Trainer, 101 U. S., 54.

The name "Brown" prefixed to Iron Bitters is likewise an ordinary patronymic (and a very common one withal) and cannot be exclusively appropriated as a trade-mark by any one person of that name, although a man may be restrained from placing his own name even on articles of his own manufacture under such circumstances and with such devices as indicates to the public that they are the goods of some other person of that name. In such cases, however, an injunc-

tion issues, not because the name of the person is a trade-mark, but because such conduct is fraudulent.

Croft *vs.* Day, 7 Beavan, 84.
Holloway *vs.* Holloway, 13 Beavan, 209.
Wotherspoon *vs.* Currie, L. R., 5 H. L., 508.
McLean *vs.* Fleming, 96 U. S., 251.
Levy *vs.* Walker, 10 L. R., Ch. Div., 447.
Seixo *vs.* Provezende, Law Rep., 1 Chan., 195; 11 Fed. Rep., 499.

It may be furthermore stated in this connection that the proprietors of "Brown's Iron Tonic" do not offer the article to the public in bottles or wrappers that bear any resemblance to complain-
30 ant's bottles and wrappers.

On the argument of the case it was conceded that the respective bottles and wrappers were unlike in form, shape, and color, and that no one acquainted with either remedy as prepared for sale would be liable to mistake it for the other, and from the specimens exhibited at the hearing so much at least was apparent to the court. As there does not appear, then, to have been an infringement of a trade-mark, and as complainant's bottles, wrappers, &c., have not been imitated so as to deceive the eye of any one who is casually acquainted with the appearance of "Brown's Iron Bitters" as that medicine is put upon the market, it is obvious that complainant's right to relief (if such right exists) rests upon rather narrow grounds.

The right must be predicated solely on the assumption that the words "Brown's Iron Tonic" so nearly resemble the words "Brown's Iron Bitters" in sound that an ordinary mind would not note the difference, and that the use of the former words by Lincoln & Co. and by the defendants tends to deceive persons who have become acquainted with the reputation of complainant's bitters, but are not familiar with the outward appearance of the packages in which they are contained.

Without stopping to determine at this point whether it is true as assumed that the words Brown's Iron Tonic do deceive persons who are only acquainted with the reputation of complainant's bitters, and without stopping to determine the extent of such deception, if any, it is proper to inquire, in the first instance, whether a court of equity can lawfully enjoin the use of the words Brown's Iron Tonic or compel the use of other words in their stead on the narrow ground above indicated—that is to say, the legal proposition involved is whether one manufacturer of a patent medicine can be enjoined from using certain words on his wrappers merely because they are simi-
31 lar in sound to words which have previously been appropriated by some other manufacturer, the words themselves in both instances being truly descriptive of an ingredient and quality of the medicine and of the person who originally compounded the same, and the packages to which they are applied being totally unlike in outward appearance.

After a careful analysis of the various decisions on the subject the court has reached the conclusion that the foregoing proposition

must be decided in the negative. None of the cases, in my judgment, warrant the assumption that a man may be enjoined from giving his own name to a medicine or other article of which he is in good faith the manufacturer, although the result may be to confound the article to some extent in the public mind with a similar article previously manufactured by some other person of the same name, unless the use of his own name is merely colorable, and is accompanied with some artifice calculated to further the deception and mislead the public.

In the case of Wotherspoon *vs.* Currie (*supra*) defendant was enjoined from using the word "Glenfield" on his starch, although the same was manufactured at "Glenfield," but it appeared that defendant had located his establishment at that place merely to acquire a colorable right to the name "Glenfield," and that by so doing he deceived the public into the belief that his starch was manufactured by complainants, who had previously manufactured starch at Glenfield and by that name had built up a great reputation for their goods.

In the case of Lee *vs.* Haley, 5 Chan. App. Cases, L. R., 155, the defendant was enjoined from using the words "Pall Mall Guinea Coal Co.," although he did business in Pall Mall St. and although there were other Guinea Coal Companies in London.

It appeared in that case, however, that defendant had previously been manager for the plaintiffs, who for a series of years carried on the coal trade in Pall Mall under the name of the
32 "Guinea Coal Co." and were frequently called the "Pall Mall Guinea Coal Co."

The case of Seixo *vs.* Provezende (*supra*) is of the same character.

These cases certainly carry the law invoked by the complainant as far as any cases that can be found, but it is manifest that the principle involved in those decisions would not warrant an injunction in the case now under consideration.

In the present case the word Brown (which forms the chief subject of contention), as employed by Lincoln & Co., truly represents a person of that name, who, while a member of the firm, compounded the formula and gave it his name, which it still bears; and, in addition to the differences in the bottles, labels, &c., before adverted to, it appears that the proprietors of the remedy, as a further mark of distinction, use the word "tonic" instead of "bitters."

These are all circumstances which tend strongly to rebut the charge that Lincoln & Co. acted *malo animo*, and that the words Brown's Iron Tonic do in point of fact deceive the public, and in this respect they clearly distinguish the case at bar from the cases last above cited, in which a fraudulent intent was clearly apparent.

The case of Hier *vs.* Abrahams, 82 N. Y., 519, which is relied upon by complainant's counsel to support the proposition that an injunction may be awarded because the words "Brown's Iron Tonic" to the unobservant ear sound like the words "Brown's Iron Bitters," in reality has no application to the present controversy. That was purely a case of trade-mark. Plaintiffs had adopted an arbitrary word, "Pride," and applied it to a brand of cigars. Defendants had

pirated the word and the court held that they must be enjoined from using the same in connection with their cigars, even
32½ though their labels and brands were in all other respects unlike the plaintiffs'. On the other hand, as the particular claim made by the complainant is that incautious persons may mistake the words "Brown's Iron Tonic" for "Brown's Iron Bitters" because of similarity in sound, it is more pertinent to quote one of the closing paragraphs in the case of the Canal Co. *vs.* Clark, 13 Wall., 327, wherein it is said:

"It is only when the adoption or imitation of what is claimed to be a trade-mark amounts to a false representation, express or implied, designed or incidental, that there is any title to relief against it. True, it may be that the use by a second producer in describing truthfully his product of a name or a combination of words already in use by another may have the effect of causing the public to mistake as to the origin or ownership of the product, but, if it is just as true in its application to his goods as it is to those of another who first applied it and who therefore claims an exclusive right to use it, there is no legal or moral wrong done. Purchasers may be mistaken, but they are not deceived by false representations, and equity will not enjoin against telling the truth."

In that case, as in this, complainants, who had long mined and sold coal under the name of "Lackawana coal," complained of defendant for describing and selling coal by the same name. The contention was that by the use of the word "Lackawana" persons were deceived and bought defendant's coal, supposing it to be plaintiff's product, just as in the present case it is asserted that by the use of the word "Brown," as applied to "Iron Tonic," the public are led to mistake the tonic for complainant's bitters. The answer is (in the language above cited) that so long as the representation is true—so long as it appears that the mixture is Brown's Tonic and no artifice is shown, as by simulated bottles and labels or other means, to deceive the public—equity will not enjoin. Whatever
33 mistakes may arise because the names of the compounders of the two medicines are the same cannot be remedied by injunction.

If it was necessary to determine the further question whether the use of the words Brown's Iron Tonic under the circumstances shown by the evidence induces any considerable number of persons to buy that remedy when they intend to buy complainant's remedy I should have very little hesitation in answering that question in the negative. Complainant seems to have been of the same opinion when the tonic was first called to its attention. In August, 1882, Lincoln & Company forwarded a bottle of the tonic, as it was prepared for sale, to the complainant for its inspection, stating that the formula had been devised by Mr. E. L. Brown, of their firm, and that Lincoln & Company were manufacturing the tonic. Complainant acknowledged the receipt of the package and in so doing used the following language:

"We wish 'Brown's Iron Tonic' a success, as upon examination

we cannot see where it can conflict with us except in the multiplicity of the Brown family."

Whilst this is not conclusive evidence on the point under consideration, it is very persuasive proof that the tonic is not liable to be mistaken for the bitters and *vice versa*, and there is nothing in the record that is calculated to overthrow the conclusion which complainant itself formed before any controversy had arisen.

Subsequently Lincoln & Company issued a trade circular in which they drew a very clear distinction between the bitters and the tonic as rival remedies, and offered the tonic to the trade at a lower price than the bitters, and recommended it as a superior remedy. That action on the part of Lincoln & Company seems to have ruptured the friendly relations before existing between the parties and undoubtedly led to this litigation. If Lincoln & Company had
34 not reduced the price of their goods and recommended them to their customers as a better article the conclusion is irresistible that complainants would never have complained of any wrong done to themselves or to the public by the sale of Brown's Iron Tonic.

Courts of equity have no concern, of course, with such acts of competition between rival manufacturers as are disclosed by the circular in question. They can only interfere when a manufacturer resorts to some unlawful or fraudulent means to confound his own goods in the public mind with those of some other dealer. The circular before alluded to did not have the effect of confusing the two remedies in the public mind and thereby inducing persons to buy the "tonic" when they intended to buy the complainant's bitters, but, as it seems to me, a directly opposite tendency.

It is unnecessary, however, to indulge in speculation on this subject, as the bill must be dismissed for the reason first above assigned—that is to say, because E. L. Brown, under the circumstances shown, had the right to affix his name to the tonic and because the mere similarity in the sound of the two names, "Brown's Iron Bitters" and "Brown's Iron Tonic," furnishes no ground for equitable interference.

35 *Testimony for Complainant.*

United States Circuit Court, Eastern District of Missouri.

BROWN CHEMICAL CO.
vs.
CHRISTIAN F. G. MEYER *et al.* } In Equity.

NEW YORK, *Nov.* 8, 1886.

Testimony taken on the part of the complainant under 67th rule of practice for the courts of equity of the United States, before John A. Shields, Esquire, special examiner, duly appointed by the said court to take testimony on the part of complainant in said cause pursuant to the annexed notice.

Present: John A. Shields, Esq., special examiner; Rowland Cox, complainant's solicitor.

Complainant's solicitor requests the examiner to certify that he, complainant's solicitor, was present with witnesses prepared to proceed with the taking of testimony in pursuance of the annexed notice, and that he postponed the calling of the witness until 12 o'clock noon, when the witness, William S. Powell, was sworn.

The examiner so certifies the facts to be.

JOHN A. SHIELDS,
Special Examiner.

WILLIAM S. POWELL, a witness called as a witness on the part of the complainant, testifies as follows in answer to questions propounded by ROWLAND COX:

My name is William S. Powell. I am thirty-three years of
36 age. I reside in Mount Washington, Baltimore county, Maryland. I am the treasurer and manager of the corporation complainant, and have been since its incorporation.

The corporation, Brown Chemical Company, was incorporated during the month of April, 1884, under the laws of the State of Maryland. The firm, Brown Chemical Co., had existed since the year 1879. I was a member of said firm since the date of its organization. All of the rights of the firm, Brown Chemical Co., including its trade-marks, good will, and business, were transferred and assigned to the corporation complainant on the 17th day of April, 1884.

In the year 1880 the firm, Brown Chemical Co., commenced the manufacture of the article "Brown's Iron Bitters" (which was sold for a few months as "Iron Bitters").

The introduction of the article was commenced by the distribution of circulars, followed by newspaper and other advertising. In 1880 we spent about ten thousand dollars in advertising it; in 1881 about from seventy-five to one hundred thousand dollars; in 1882 we spent over a quarter of a million dollars, and have continued advertising to date. The aggregate spent in advertising Brown's Iron Bitters is over one million four hundred thousand dollars.

Brown's Iron Bitters, made by the complainant, is one of the most popular and salable proprietary articles on the market. It is sold in all parts of the United States, and is especially popular, and has been for a long time, in the Southwest, in which section it is sold in large quantities and where a demand for it has existed since as early as the middle of 1881. It is known in many parts of the United States, and has been for a number of years, as "Brown's Iron Tonic." I mean it is often referred to by that name. I have looked at our correspondence and find that in numerous instances it is referred to as "Brown's Iron Tonic." We have used the word "tonic"
37 in connection with our article from the first, and emphasized the fact in our advertisements and otherwise that our article was of special value as a "tonic." I produce herewith a tacking card or snipe used in advertising Brown's Iron Bitters. The complainant has used hundreds of thousands of cards or snipes like this, which have been posted and tacked up in great numbers in all parts of the United States.

The tacking card or snipe is offered in evidence by complainant's counsel, and marked "Complainant's Tacking Card, J. A. S., Ex., Nov. 8, 1886."

This card or snipe has always been of the same color and the words arranged in the same way, the words "Iron Bitters," and indeed all the other words, having remained unchanged from the first. This arrangement of words and letters, with the exception of "physicians recommend it," was also used in our newspaper advertisements and on the sides of our boxes. Our object was to create a trade-mark in this particular style and arrangement, so that when anybody saw it they would be reminded of our article.

At the time of the adoption of the name Brown's Iron Bitters there was no similar article in which the name "Brown's" constituted a part of the name or designation on sale. I believe the designation was original with us, and that the words "Brown's Iron" had not been used in connection with a remedy containing "iron" until after we gave them prominence.

The paper produced herewith, which is marked for identification "Complainant's Proposal, J. A. S., Ex, Nov. 8, 1886," is a true and genuine paper. It bears the signatures of William H. Brown and Alexander E. Brown, with whose signatures I was familiar, and my own signature. The paper marked "Complainant's Assignment, J. A. S., Ex., Nov. 8, 1886," is also a true and genuine paper, and the signatures thereto attached are those of said William H. Brown and Alexander E. Brown and myself. The said firm of Brown Chemical Co. consisted of said William H. Brown, Alexander E. Brown, and myself at the time said papers were signed as aforesaid.

WILLIAM S. POWELL.

Sworn to before me this 9th day of Nov., 1886.

JOHN A. SHIELDS,
Special Examiner.

Robert F. Jackson, a witness called on the part of the complainants, having been duly sworn, testifies as follows in answer to questions propounded by ROWLAND COX:

My name is Robert F. Jackson; my age, 28; I reside in Baltimore, Md. I am a traveling salesman for H. Wilkens & Co., of Baltimore, Md., in whose employ I have been for about two months. Previous to that I was in the employ of the complainant as advertising agent and salesman. I was in their employ for about two years. My duties consisted in selling goods, working up the trade, and looking after advertising. The particular territory assigned to me was Missouri, Kansas, and Arkansas. I know the snipe or tacking card of which "Complainant's Tacking Card" is a specimen. I have used many thousands of them—I think at least fifty thousand—which I have from time to time caused to be posted for the complainant for the purpose of advertising their Brown's Iron Bitters. The method of advertising which I pursued by direction of the complainant was to visit prominent points which were

"posted" with posters and snipes, after which I distributed books relating to the remedy and afterwards solicited orders. I always used the yellow snipe or tacking card in large numbers. About the first of June, 1886, I visited the city of Little Rock, Arkansas, & had the place posted, as was my custom. I used great numbers of the yellow snipes or tacking cards like "complainant's Tacking Card." I left Little Rock and returned from time to time during said month of June. Little Rock was my headquarters. About three weeks after I had posted it, as I have stated, I returned after an absence of some days, when I found that the city had been posted with posters like that I now produce. (Complainant's counsel offers in evidence the snipe or poster produced by the witness, which is marked Lincoln's Poster, J. A. S., examiner, November 8th, 1886.) The said city of Little Rock had been posted in my absence with snipes or posters all like that marked "Lincoln's Poster, J. A. S., examiner." They were all yellow, & otherwise the same as the specimen I have produced. Thousands of them had been used & had been generally placed in proximity to the posters I had used for Brown's Iron Bitters. I remember one instance in which the Lincoln posters had been placed so as to form a frame around a large poster which I had previously put up. I would estimate that probably five thousand posters like that marked Lincoln's Poster had been put up. The specimen I produce, marked Lincoln's Poster, was given me by C. M. Rome, a bill poster of Little Rock, whom I saw in the act of posting others exactly like it, and with whom I am personally acquainted. The said Rome at or about the time he gave me the said poster stated to me in substance that he was sorry to work against the complainant, but was compelled as a matter of business to put up whatever was given him. He told me at the same time that he had been employed by C. J. Lincoln & Co. of said city of Little Rock, to post the town with posters like that marked "Lincoln's Poster." He also told me that said Lincoln was about to make use of a copy of another poster used by the complainant; that the poster to which I have referred, which had been placed in large numbers in said Little Rock, had been posted by direction of said Lincoln of the firm of Lincoln & Co., & that said Lincoln had informed him, the said Rome, that he, Lincoln, would give him, Rome, a great deal of posting to do of a similar kind in other places, & that said Lincoln intended to follow me & post other places as he had posted Little Rock.

Adjourned until Nov. 9th, at 10 a. m.

New York, November 9th, 1886.

Met pursuant to adjournment, counsel appearing as before.

"Brown's Iron Bitters" is to my knowledge often spoken of as a "tonic." This has been the case always, as far as I know. I have heard of instances in which people desiring "Brown's Iron Bitters" and asking for it have been given "Brown's Iron Tonic" made by C. J. Lincoln & Co. When I was canvassing for the trade in Little

Rock I went into one of the principal drug stores and was voluntarily told by the druggist or else his clerk—I can't be sure which—that they had recently had quite a disturbance with a man to whom they had sold Brown's Iron Tonic; that the man insisted that he had asked for Brown's Iron Tonic, meaning Brown's Iron Bitters, and, after receiving Brown's Iron Tonic, took it from the store and went home and there discovered that he had not received what he wanted, when he brought back the bottle of Brown's Iron Tonic and insisted that he had been imposed upon. I heard of mistakes and of the same being delivered when the customer meant to ask for "Brown's Iron Bitters" in almost every town I canvassed. I recollect that I called upon the principal druggist in Arkansas City. He told me he was out of "Brown's Iron Bitters," and that he was selling Brown's Iron Tonic, that he bought the "tonic" for a great deal less than the bitters. I remember talking with a prominent druggist in Pine Bluff, who said to me that the two articles, Brown's Iron Bitters and Brown's Iron Tonic, were often mistaken for each other.

I heard the same statement made in other places. I heard a number of druggists state that "Brown's Iron Tonic" was sold upon the advertising of Brown's Iron Bitters. I remember one instance of this kind. I was talking with a Mrs. Batsford of Markham street, Little Rock, who told me that she had been very much benefited by taking "Brown's Iron Bitters." She was corrected by her daughter who was present, who said to her that the medicine referred to by Mrs. Batsford was "Brown's Iron Tonic." I am sure that Brown's Iron Tonic has often been mistaken in the territory in which I worked for "Brown's Iron Bitters." I recall now, as showing how mistakes arise, that Mrs. Batsford told me that she was led to try the medicine she used by reading one of the books relating to Brown's Iron Bitters published by the complainant. This confusion has existed ever since I commenced to work in the territory in which I referred.

I believe that "Brown's Iron Tonic" could easily be sold by an unscrupulous dealer as and for Brown's Iron Bitters. Of course a great many people who had trouble with the appearance of Brown's Iron Bitters, and such people might, I believe, be imposed upon. Do Brown's Iron Tonic in two places and in very suspicious positions from the letters "Bro" appeared. I have heard it stated by several persons in the trade that these letters were often referred to by customers as being an abbreviation of bitters commonly amongst the colored people.

Another circumstance to which my attention was repeatedly called by persons in the trade was that the word "tonic" as shown in the Exhibit "Complainant's Tucking Card" itself advertises Iron bitters everywhere as "The best tonic" and long as it was had advertised their medicine as "Iron bitters the best" which had resulted in Lincoln & Co. getting the benefit of the advertising of the complainant. I could mention a great many other instances such as I have referred to which came under my observation from time to time.

Complainant's article is more frequently spoken of in the terri-

tory I canvassed as "Brown's Iron Tonic Bitters" than anything else. I believe the name of Lincoln's article is often read in connection with the abbreviation "B. I. T." so that when looking at Lincoln's label it is read as if it were "Brown's Iron Tonic Bitters."

I have heard a number of druggists refer to Lincoln's article as "Brown's Iron Tonic Bitters." I believe it is known to a great many consumers by that name.

The consumers design on Lincoln's label I have often heard mentioned by different people and have heard the question discussed whether it was meant to be read as an abbreviation of letters in connection with the words "Brown's Iron Tonic" or not. I have often heard it so read and have heard people say that it was meant to be taken as an abbreviation of the word "Limes."

I have never seen a design like that designated "trade mark" on Lincoln's label used upon any other of the goods of Lincoln & Co. I believe it to be a design used exclusively on "Brown's Iron Tonic" and that the infringement or statement, if there is any, that it is Lincoln & Co's trade-mark is unintended.

The wrapper I produce herewith which is offered in evidence by complt's counsel and marked "Lincoln's Wrappers, November 9, 1886, J. A. S., Exr." is a specimen of the wrappers used upon "Brown's Iron Tonic" for the past year or more and to which I have referred in my testimony.

ROBT. E. JACKSON.

Sworn to before me this 9th day of Nov., 1886.

JOHN A. SHIELDS,
Special Examiner.

(Here follow lithographs marked pp. 124, 125, 126.)

13 *Testimony for Complainant in Rebuttal.*

United States Circuit Court, Eastern District of Missouri.

BROWN CHEMICAL Co. }
vs. } In Equity.
CHRISTIAN F. G. MEYER *et al.* }

Testimony taken on the part of the complainant in rebuttal, pursuant to agreement of counsel hereto annexed, at the office of Rowland Cox, Esq., No. 229 Broadway, New York, N. Y., March 17, 1887, before George Cook, Esq., notary public.

Present: Rowland Cox, Esq., for complainant.

Complainant's counsel offers in evidence a certified copy of trade-mark registration No. 10323, granted to Charles J. Lincoln and Eugene L. Brown May 29, 1883, and the same is marked "Complainant's Exhibit Lincoln Registration," G. C., N. Y., March 17, 1887.

Compliments Lathrop Co. Ltd. Mar. 8/86.

Brown Chemical Co.

BROWN'S IRON BITTERS

PHYSICIANS RECOMMEND IT.

THE BEST TONIC

BROWN'S

IRON BITTERS

PHYSICIANS RECOMMEND IT.

THE BEST TONIC

E. J. Lincoln's

BROWN'S IRON TONIC

PHYSICIANS PRESCRIBE IT AS THE BEST

Lincoln's Poster
J. C. & C. Ex.
Nov. 8, 1856.

Lucius Trapier
Nov. 2 1886
L. T. T. Co

423

IRON TONIC ENRICHES THE BLOOD.
REGULATES THE NERVES.
OPERATES ON THE BOWELS.
NULLIFIES DISEASE.
'TIS THE VERY BEST
OF ALL TONICS
NATURE'S OWN REMEDY!
IT IS SPEEDY AND PERMANENT, AND
CURES WHERE OTHER TONICS FAIL.

B. T.

"IRON TONIC IMPARTS
STRENGTH AND VIGOR
TO THE WEAK AND CONVALESCENT.
HEALTH, HAPPINESS AND ENERGY
ENSURED BY ITS USE.
BY THE USE OF IRON TONIC
EMACIATED PERSONS GAIN FLESH.
SPIRIT AND MUSCULAR POWER.
'TILL COMPLETELY CURED.

BROWN'S IRON TONIC.

DOES NOT BLACKEN THE TEETH

B. T.

TRADE MARK

This is a combination of Iron with the best tonics and the most pleasant aromatics known to materia medica, combined in such a manner that the generally unpleasant taste of Iron is completely disguised, by skillful blending with pleasant aromatics, thus enabling the most delicate Stomach to take and retain it.

It will prove an invaluable aid to the physician in building up the shattered systems of those who are recovering from an attack of typhoid or malarial fevers etc.

To the weak and debilitated this will prove to be the only remedy that will impart new life and energy to them.

PREPARED ONLY BY

LINCOLN & BROWN

WHOLESALE DRUGGISTS

LITTLE ROCK, ARKANSAS.

Price, $1.00.

IRON TONIC
CORRECTS
INDIGESTION.

STRENGTHENS THE MUSCLES AND NERVES

IRON TONIC
IN
DYSPEPSIA.

Unlike most of the Iron Tonic taken immediately AFTER meals removes all unpleasant symptoms arising from Dyspepsia, such as Heartburn, Flatulence &c and is endorsed by entire faculty as the best tonic for the digestive organs.

IRON TONIC
CURES
DYSPEPSIA.

PURIFIES THE BLOOD AND RENOVATES THE SYSTEM.

INVIGORATES THE LIVER AND

WILLIAM S. POWELL, recalled on the part of the complainant in rebuttal, having been duly sworn, deposes and says as follows in answer to questions propounded by Mr. COX:

I am the William S. Powell who was examined as a witness in this case on November 8, 1886. I am still the treasurer and manager of the corporation complainant.

In my deposition heretofore made in this case I testified from memory as to the date of the introduction of Brown's Iron Bitters and amounts expended in introducing and popularizing it. I have since caused a painstaking examination to be made and now desire to correct the dates and amounts heretofore given by me as follows:

Brown's Iron Bitters was put upon the market during the year 1879. During the year there was expended in advertising it
44 $87,083.10; in 1880, $33,551.47; in 1881, $130,399.47; in 1882, $194,147.39, and in 1883, $244,587.10.

Q. 1. What were your sales during the year 1882, if you are able to state?

A. About 4,200 gross.

Q. 2. It is stated by the witness Lincoln in his deposition in this case as follows:

"Does not blacken the teeth. We (meaning the firm of Lincoln & Brown) added to the trade-mark; that is the way we put it in our first advertisements. We used it as a special distinction of our preparation."

In another connection he says, when asked what he had to say in reference to "Brown's Iron Tonic" will not blacken the teeth—

"We claim it does not blacken the teeth; in fact, we know it does not, and we can prove that it never has, but many iron preparations do, and we used it before any other manufacturer of an iron preparation ever did use it."

Please state when the words "does not blacken the teeth" or substantially similar words were first used in connection with Brown's Iron Bitters and give your reasons for your answer.

A. The words "will not discolor or blacken the teeth" was a part and parcel of the first advertisements put out for "Brown's Iron Bitters" in 1879, and we believed at that time that no such claim had ever been made for an iron preparation, and the preparation of Brown's Iron Bitters was compounded with an idea of doing away with this objectional feature that had pertained to all iron medicines then known to me before its introduction, and we made that a leading recommendation of the article.

Q. 3. Are you sure that the words "does not blacken or discolor the teeth" were used in connection with Brown's Iron Bitters as early as the year 1879?

A. I know that to be a fact.

Q. 4. Was this statement made a special recommendation
45 of the Iron Bitters during the years 1879, 1880, 1881, and 1882?

A. It was, and always has been.

Q. 5. Have you examined the circulars and advertisements pub-

lished during the years 1880 and 1881 with a view to ascertaining the date of the publication of the recommendation referred to in your last answer?

A. I have and find my answer correct.

Q. 6. I show you a circular and advertisement. Please state if you know when they were issued and by whom.

A. They were both issued by the Brown Chemical Co.; the circular in 1879, and the advertisement was published in 1881. The circular was circulated for several years after it was issued.

The circular referred to by the witness is offered in evidence by complainant's counsel and marked "Circular of 1879, March 17, 1887, G. C., N. P.;" and the advertisement is also offered in evidence and marked "Advertisement of 1881, March 17, 1887, G. C., N. P."

Q. 7. Are you able to state whether or not Brown's Iron Bitters was advertised in the State of Arkansas prior to April, 1882? And, if you say you are, state when, how, and to what extent it was advertised in that State prior to the date I have given.

A. I have examined the books and accounts, and I find that Brown's Iron Bitters was advertised in the State of Arkansas in 1881 and in 1882—prior to April of that year.

Q. 8. In what cities or towns of Arkansas was Brown's Iron Bitters advertised, say, prior to the first of January, 1882?

A. Little Rock, Russellville, Texarkana, Fort Smith, Helena, and Hot Springs.

Q. 9. What means of advertising Brown's Iron Bitters did you pursue at the places referred to in your last answer?

A. There was posted large sheets of paper, known as full sheets, which were about 32 by 44 inches in dimension; also sheets
46 of paper, the same one-fourth that size, and snipes and books distributed to all the houses in those cities, besides large quantities given to the druggists in those cities for distribution over the counters. In addition to this there were signs up in all the drug stores in those cities, all advertising Brown's Iron Bitters.

Q. 10. Do you mean to say that all this advertising stated in your last answer was done prior to January, 1882?

A. I do.

Q. 11. Can you give the date when the advertising was done in the city of Little Rock and the number of snipes, &c., which were made use of? If you can, please do so.

A. The city of Little Rock I find was advertised before October 24, 1881. That is the date we received the bill for work done there. There was at that time one hundred and fifty full sheets; about three hundred of the quarter sheets; fifteen hundred snipes, and five thousand books distributed, and all the druggists supplied with show-cards.

Q. 12. Look at the postal card I now show you and state what you know concerning it.

A. I know it is postal card received by the complainant in an envelope from George A. Hughes & Co., wholesale druggists, of Little Rock, Arkansas.

Q. 13. Do you recognize the signature of George A. Hughes & Co., which forms a part of the postal card referred to in your last answer?

A. I do. I believe it is that firm's signature. It is the same we have received on orders and checks from them.

Q. 14. Is the house of George A. Hughes & Co. a well-known drug-house?

A. It was at that time, but has since become financially embarrassed, and is now, I believe, out of business.

Q. 15. It was at one time a well-known drug-house in Little Rock, Arkansas?

A. It was.

The postal card referred to by the witness is offered in evidence by complainant's counsel and marked "Little Rock Postal Card, March 17, 1887, G. C., N. P."

47 Q. 16. The defendant in this case has testified to a conversation which he says he had with you prior to the institution of this suit and in which the Brown's Iron Tonic was referred to. Have the kindness to say whether you assented, directly or indirectly, to the sale of the Brown's Iron Tonic by the defendant's firm.

A. I did not. I went to St. Louis with the express purpose of protesting against their sale of the Brown's Iron Tonic. My recollection of the conversation is about the same as that of Mr. Meyer, but I am certain that I protested against the continued sale of Brown's Iron Tonic and insisted positively that it was an infringement of our rights, and that we would commence suit against all firms handling the Brown's Iron Tonic, and that necessarily, although unwillingly, the defendant's firm would be one of them.

WILLIAM S. POWELL.

Sworn to before me this 17th day of March, 1887.

[SEAL.] GEORGE COOK,
Notary Public, New York & Kings Co's.

EDWARD G. WELLS, a witness called in rebuttal on the part of the complainant, having been duly sworn, testifies as follows in answer to questions propounded by Mr. COX:

Q. 1. What is your name, age, residence, and occupation?

A. Edward G. Wells; age, 40; residence, New York city; occupation, salesman.

Q. 2. You are a salesman for whom?

A. Charles N. Crittendon.

Q. 3. What is the business of Charles N. Crittendon?

A. Dealer in proprietary medicines.

Q. 4. State how long he has been in that business, if you know, and what his standing is in the trade.

A. He has been in business for twenty-five years. He
48 is the largest dealer in proprietary medicines in the United States.

Q. 5. How long have you been in the medicine business?
A. Twenty-six years.
Q. 6. Continuously for twenty-six years?
A. Twenty-six years in the business.
Q. 7. Please assume that there is upon the market a proprietary medicine which is sold under the designation "Meyer's Iron Bitters," and that there is subsequently introduced an article which is sold under the name of "Meyer's Iron Tonic." Is it or not your judgment that those two names would be so nearly alike as to be mistaken one for the other by consumers?
A. Yes. I think they would be so nearly alike that there would be danger of consumers mistaking one for the other.
Q. 8. Do you know of an article sold under the name of "Bull's Sarsaparilla?"
A. Yes, sir.
Q. 9. How many "Bull's Sarsaparillas" are there in the market at present?
A. I know of two.
Q. 10. How are they distinguished—by what names?
A. "Bull's Sarsaparilla" is the familiar name of an article manufactured at Louisville, and the sarsaparilla manufactured in Connecticut is "A. H. Bull's Sarsaparilla."

EDWARD G. WELLS.

Subscribed and sworn to before me this 23rd day of March, 1887.
[SEAL.] GEORGE COOK,
Notary Public, Kings Co.

Cert'f. filed in New York Co.

JOHN H. FRANCIS, a witness called in rebuttal on the part of the complainant, having been duly sworn, testifies as follows in answer to questions propounded by Mr. COX:

49 Q. 1. What is your name, age, residence, and occupation?
A. John H. Francis; age, 43; dealer in proprietary medicines; residence, Brooklyn, N. Y.
Q. 2. Your place of business is where?
A. No. 70 Maiden Lane, New York.
Q. 3. How long have you been in the business of proprietary medicine?
A. I have been in the business about twenty-two years.
Q. 4. Is your business a large one?
A. My business is the next in magnitude to that of C. N. Crittendon. I mean in my branch of business in N. Y. city.
Q. 5. By your branch of business you mean proprietary medicines?
A. Proprietary medicines exclusively.
Q. 6. Do you know the article "Brown's Iron Tonic?"
A. I have heard of it, but never seen it.
Q. 7. Do you think the names "Brown's Iron Bitters" and "Brown's Iron Tonic" are sufficiently alike to be mistaken by consumers?

A. I think, iron being taken almost exclusively as a tonic, that a person asking for "Brown's Iron Bitters" might very easily be deceived or imposed upon if given a bottle of the "Brown's Iron Tonic." The words "Brown's Iron" would be as far as the general public would look.

JNO. H. FRANCIS.

Subscribed and sworn to before me this 23d day of March, 1887.

GEO. COOK,
Notary Public, New York & Kings Co's.

50 "COMPLAINANT'S EXHIBIT LINCOLN REGISTRATION." G. C., N. P. M'ch 17th, 1887.

$1.40 p'd. 3681.

(2-175.)

DEPARTMENT OF THE INTERIOR,

[Vignette.]

UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the trade-mark registered by Charles J. Lincoln and Eugene L. Brown May 29th, 1883, number 10323, for a tonic.

In testimony whereof I, M. V. Montgomery, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 19th day of February, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and eleventh.

Seal Patent Office, United States of America.

M. V. MONTGOMERY,
Commissioner.

50*a* No. 10323.

THE UNITED STATES OF AMERICA.

[Vignette.]

To all to whom these presents shall come:

This is to certify that by the records of the United States Patent Office it appears that Charles J. Lincoln and Eugene L. Brown, of Little Rock, Arkansas, did, on the 4th day of May, 1883, deposit in said office for registration fac-similes of a certain trade-mark for a tonic, and the date of the receipt thereof was duly noted and recorded; that on the 4th day of May, 1883, they deposited therewith a statement and a written declaration under the oath of Charles J. Lincoln and Eugene L. Brown, members of said firm, copies of all of which are hereto annexed; and the said firm having made the payment of a fee of twenty-five dollars and complied with the regula-

tions in such cases prescribed by the Commissioner of Patent and in all other respects complied with an act of Congress approved March 3, 1881, entitled "An act to authorize the registration of trade-marks and protect the same," the said fac-similes, statement, and declaration were duly recorded, and the said trade-mark has been duly registered in the said Patent Office this 29th day of May, one thousand eight hundred and eighty-three, and protection therefor will remain in force for thirty years from said date unless sooner terminated in accordance with section 5 of said act.

In testimony whereof the seal of the Department of the Interior is hereto affixed this twenty-ninth day of May, 1883, and
[L. S.] of the Independence of the United States the one hundred and seventh.

Given under my hand at Washington, D. C.

E. M. MARBLE,
Commissioner of Patents.

(Here follows lithograph marked p. 50*b*.)

50*c* UNITED STATES PATENT OFFICE.

CHARLES J. LINCOLN and EUGENE L. BROWN, of Little Rock, Ark.

Trade-Mark for a Tonic.

Statement and declaration of trade-mark No. 10323, registered May 29, 1883. Application filed May 4, 1883.

Statement.

To all whom it may concern:

Be it known that we, Charles J. Lincoln and Eugene L. Brown, of Little Rock, Arkansas, citizens of the United States of America, residing at Little Rock, in the county of Pulaski and State of Arkansas, and doing business at Little Rock, have adopted for our use a trade-mark for a tonic, of which the following is a full, clear, and exact specification.

It consist of three letters, "B. I. T.," for the words "Brown's Iron Tonic." These letters are preferably arranged with the letter "I" placed between and made larger than the letters "B" and "T." Scroll or embossed engraving is placed around the letters "B. T.," the letter "I" being separated from the others, and therefore standing out conspicuously.

The printed ornamentation about the letters may be changed at pleasure without changing the essential features of the trade-mark, which are the letters "B. I. T.," arranged and shown as above described.

The class of medicine or merchandise to which this trade-mark has been appropriated is medical compounds, and the particular description of goods comprised in such class for which we use the said trade-mark is a medical compound of our own preparation for the alleviation and cure of pain or inflammation.

50[illegible]

Trade-Mark.

Charles J. Lincoln and

Eugene L. Brown.

Tonic.

No. 10323. *Registered May 29, 1883.*

BROWN'S

IRON

TONIC

Does Not Blacken the Teeth.

We have been accustomed to have the said trade-mark cast in or upon bottles for holding the said medical compound, and also to print or mark it on labels to be pasted or otherwise fixed to or on such bottles or on the packages containing them. We also use it on circulars or advertisements relating to said compound.

This trade-mark we have used continuously in our business since April, 1882.

In testimony whereof we affix our signatures in presence of two witnesses.

CHARLES J. LINCOLN.
EUGENE L. BROWN.

Witnesses:
J. E. WILLIAMS.
GEO. W. SHINN.

Declaration.

STATE OF ARKANSAS, } ss:
County of Pulaski, }

C. J. Lincoln and Eugene L. Brown, being duly sworn, depose and say that they are members of the firm of Lincoln & Brown, the applicants named in the foregoing statement; that they verily believe that the foregoing statement is true; that they have at this time a right to the use of the trade-mark therein described; that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that it is used in commerce with the Navajo tribe of Indians; that the description and fac-similes presented for record truly represent the trade-mark sought to be registered, and that they are citizens of the United States.

CHARLES J. LINCOLN.
EUGENE L. BROWN.

Sworn to and subscribed before me this 20th day of April, 1883.
[L. S.] GEO. W. SHINN,
Notary Public.

[Indorsed:] Filed Mar. 25, 1887. A. P. Selby, clerk.

(Here follows circular marked page 50¼.)

50½ *Stipulation as to Missing Exhibit.*

United States Circuit Court, Eastern Division of the Eastern District of Mo.

BROWN CHEMICAL CO.
vs.
CHRISTIAN F. G. MEYER *et al.* } In Equity. No. 2651.

It is agreed by counsel that the following is a true copy of the exhibit marked "Little Rock Postal Card, March 17, 1887, G. C., N. P.,"

originally attached to the deposition of Wm. S. Powel, taken on behalf of complainant in the above-entitled cause, viz:

(*In one handwriting.*)

HENSLY, '83.

"GEORGE A. HUGHES,

DEAR SIR—I ordered one dozen bottles of Brown's Iron TONIC for this place. How about it?

Yours,
J. V. BUCHANAN,
per H. O. Conkling."

(*In the handwriting of Geo. A. Hughes:*)

"BROWN CHEMICAL CO.:

Please credit on account George A. Hughes & Co., Little Rock, Ark."

And it is further agreed that as the original exhibit cannot be found said copy may be used instead of it in making up a transcript of the record in said cause.

REX & MOODY, *Solicitors for Compl'nt.*
BOYLE, ADAMS & McKEIGHAN,
Solicitors for Defendants.

[Endorsed:] No. 2651. United States circuit court, E. div., E. dist. of Mo. Brown Chemical Co. *vs.* Christian F. G. Meyer *et al.* Stipulation as to missing exhibit.

(Here follows label marked page 50¾.)

51 United States Circuit Court, Eastern District of Missouri.

BROWN CHEMICAL COMPANY
vs.
CHRISTIAN F. G. MEYER *et al.* } In Equity.

Interrogatories to be Propounded to —— Keevil, Residing at or Near the City of Dallas, Texas.

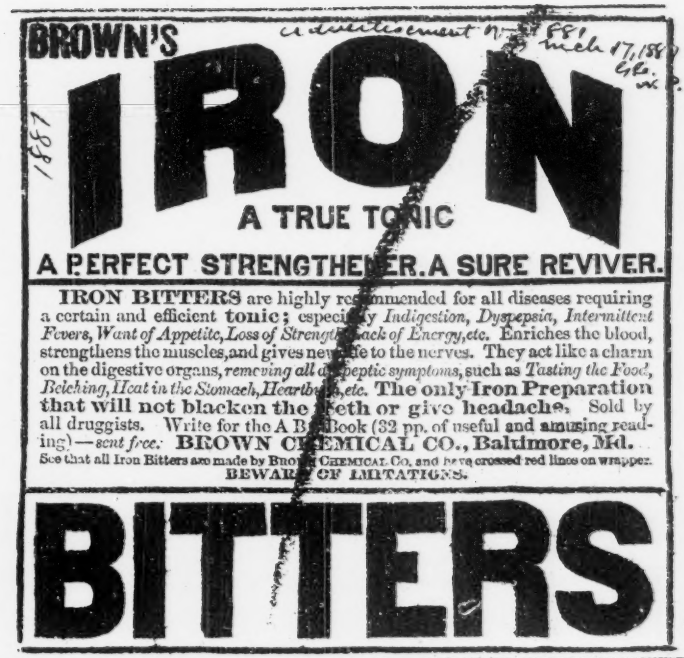
Int. 1. Please state your name, age, residence, and occupation.

Int. 2. Do you know the articles "Brown's Iron Tonic" and "Brown's Iron Bitters?"

Int. 3. Do you know James A. Duncan, a druggist of Dallas, Texas?

Int. 4. Did you ever apply to James A. Duncan for a bottle of "Brown's Iron Bitters" and receive a bottle of "Brown's Iron Tonic?"

Int. 5. If you say you did, please state when, and give all the circumstances connected with the purchase of the bottle, stating whether you believed at the time you received it it was "Brown's Iron Bitters;" when, if at all, you discovered that it was not, and all other


BROWN'S
IRON
A TRUE TONIC
A PERFECT STRENGTHENER. A SURE REVIVER.
IRON BITTERS are highly recommended for all diseases requiring a certain and efficient tonic; especially Indigestion, Dyspepsia, Intermittent Fevers, Want of Appetite, Loss of Strength, Lack of Energy, etc. Enriches the blood, strengthens the muscles, and gives new life to the nerves. They act like a charm on the digestive organs, removing all dyspeptic symptoms, such as Tasting the Food, Belching, Heat in the Stomach, Heartburn, etc. The only Iron Preparation that will not blacken the teeth or give headache. Sold by all druggists. Write for the A B C Book (32 pp. of useful and amusing reading)—sent free. BROWN CHEMICAL CO., Baltimore, Md.
See that all Iron Bitters are made by Brown Chemical Co. and have crossed red lines on wrapper.
BEWARE OF IMITATIONS.
BITTERS

BROWN'S IRON BITTERS SOLD IN JAMESTOWN BY HATCH & CRANE

details connected with the purchase and use of the said bottle of "Brown's Iron Tonic."

REX & MOODY,
Solicitors for Complainant.

United States Circuit Court, Eastern District of Missouri.

BROWN CHEMICAL COMPANY
vs.
CHRISTIAN F. G. MEYER *et al.* } In Equity.

52 *Interrogatories to be Propounded to James A. Duncan, of Dallas, Texas.*

Int. 1. State whether you have been in the habit of selling Brown's Iron Bitters and Brown's Iron Tonic.

Int. 2. Do you know —— Keevil, who resides in or near the city of Dallas, Texas?

Int. 3. Do you remember supplying said Keevil with a bottle of Brown's Iron Tonic when he asked for Brown's Iron Bitters? And, if you say you do, have the kindness to state all you know concerning the bottle of "Brown's Iron Tonic" you delivered to him.

REX & MOODY,
Solicitors for Complainant.

UNITED STATES OF AMERICA,
Eastern District of Missouri.

BROWN CHEMICAL COMPANY
vs.
C. F. G. MEYER *et al.*

Cross-Interrogatories to be Propounded to James A. Duncan.

Cross-interrogatory 1st. If in answer to interrogatory third you state that you supplied —— Keevil with a bottle of Brown's Iron Tonic when he asked for Brown's Iron Bitters, state what he said to you and what you said to him; and if you state that you did such a fraudulent thing, state why you did it and all about it.

Cross-interrogatory 2nd. State how long and to what extent and at what places have you sold Brown's Iron Bitters.

Cross-interrogatory 3rd. State how long and to what extent and at what places you have sold Brown's Iron Tonic.

BOYLE, ADAMS & McKEIGHAN,
Solicitors for Defendants.

53 UNITED STATES OF AMERICA,
Eastern District of Missouri.

BROWN CHEMICAL COMPANY
vs.
C. F. G. MEYER *et al.*

Cross-Interrogatories to be Propounded to —— Keevil.

Cross-interrogatory 1st. If in answer to interrogatories four and

five you state that you ever applied to James A. Duncan for a bottle of Iron Bitters and received a bottle of Brown's Iron Tonic, be good enough to state just what you said to Mr. Duncan and what he said to you; also state whether you had ever bought Brown's Iron Bitters before, and, if so, how often; also whether you ever *before* had bought Brown's Iron Tonic before, and, if so, how often.

BOYLE, ADAMS & McKEIGHAN,
Solicitors for Defendants.

54 THE STATE OF TEXAS, }
County of Dallas. }

BROWN CHEMICAL CO. }
vs. }
C. F. G. MEYER *et al.* }

Depositions of witnesses produced, sworn, and examined on the 25th day of March, 1887, between the hours of nine o'clock and eleven o'clock a. m. of said day, at my law office, on Main street, in the city and county of Dallas, State of Texas, I being a special commissioner in said case and authorized by the accompanying commission to take said depositions in a certain cause now pending in the circuit court of the United States for the eastern district of Missouri, between Brown Chemical Co. *vs.* C. F. G. Meyer *et al.*, on the part of the plaintiff.

W. H. KEVIL, of lawful age, being produced, sworn, and examined on the part of the plaintiff, deposeth and saith:

Ans. 1st. W. H. Kevil; seventy years of age in June; reside in East Dallas; am running street express.

Ans. 2d. I know both "Brown's Iron Tonic" and "Brown's Iron Bitters."

Ans. 3d. I know James A. Duncan, a druggist of Dallas, Texas.

Ans. 4th. I did apply to said Jas. A. Duncan for a bottle of "Brown's Iron Bitters" and received instead a bottle of Brown's Iron Tonic.

Ans. 5th. I don't remember the day, but some time in the fall of 1886 I applied to Mr. Duncan, the druggist, for a bottle of "Brown's Iron Bitters," which I had been in the habit of purchasing from him. He wrapped up a bottle of Brown's Iron Tonic, as it afterwards proved to be, and I carried it home and gave a dose of it to my wife, thinking it was "Brown's Iron Bitters." As soon as she swallowed it she said, This is not Brown's Iron Bitters. The stuff made her sick at the stomach, and she vomited. I carried
55 the tonic to Dr. Howell, for whom Duncan was clerking, and claimed a credit for it and got a bottle of Brown's Iron Bitters in exchange.

W. H. KEVIL.

Ans. to X Interrogatories by Witness, W. H. Kevil.

Ans. 1st X Int. I asked him for a bottle of Brown's Iron Bitters

and Mr. Duncan gave me a bottle of Brown's Iron Tonic, and there was no talk between us that I remember of. I had often bought Brown's Iron Bitters from him and had never bought any Brown's Iron Tonic from him or any one else, and haven't bought any since.

Witness my hand this 25th day of March, A. D. 1887.

W. H. KEVIL.

Sworn to and subscribed before me on the day, at the place, and within the hours first aforesaid.

BARRETT GIBBS,
Special Commissioner.

THE STATE OF TEXAS, }
County of Dallas. }

Deposition of witness produced, sworn, and examined on the 25th day of March, A. D. 1887, between the hours of nine and eleven o'clock a. m., at my law office, on Main St., in the city and county of Dallas, State of Texas, I being a special commissioner in said case and authorized by the accompanying commission to take said deposition in a certain cause now pending in the U. S. circuit court for the eastern district of Missouri, in equity—Brown Chemical Co., plaintiff, and C. F. G. Meyer *et al.* being defendants—on the part of the plaintiff.

J. A. DUNCAN, of lawful age, being produced, sworn, and examined on the part of the plaintiff, deposeth and saith:

Ans. 1st Int. I have been selling "Brown's Iron Bitters"
56 and "Brown's Iron Tonic" both.

Ans. Int. 2d. I am well acquainted with W. H. Keevil, who resides in East Dallas.

Ans. Int. 3d. Mr. Keevil was in the habit of buying Brown's Iron Bitters from me. Some time last fall he came in the store and asked for the bitters. I gave him the Brown's Iron Tonic. Two or three days afterwards he returned it and said that this was not Brown's Iron Bitters and that it had made his wife sick. Mr. Howell then got him a bottle of the bitters and took back the tonic. When I gave Mr. Keevil the Brown's Iron Tonic I wrapped it up and gave it to him.

Witness my hand this 25th day of M'ch, 1887.

JAS. A. DUNCAN.

Ans. to X Interrogatories Propounded to James A. Duncan.

Ans. to 1st X Int. We were out of Brown's Iron Bitters and we wanted to get rid of the Brown's Iron Tonic, and very few know the difference unless they have been using it, and I thought it would be all right with Mr. Keevil. I am salesman for Howell & Bro.

Ans. to X Int. 2d. I sell drugs for Howell & Bro. on Elm St., city of Dallas, and have handled Brown's Iron Bitters and Brown's Iron Tonic for them, and sold both to a great extent, but have sold one

gross of Brown's Iron Bitters to where I sold a dozen of the Brown's Iron Tonic.

Ans. X Int. 3. This is answered in the foregoing answer, except to say that I have handled the bitters about four years and the Brown's Iron Tonic about two years.

Witness my hand this March 25th, 1887.

JAS. A. DUNCAN.

THE STATE OF TEXAS, }
County of Dallas. }

Sworn to and subscribed before me on the day, at the
57 place, and within the hours first aforesaid.

BARRETT GIBBS,
Special Commissioner.

58 In the Circuit Court of the United States for the Eastern District of Missouri.

BROWN CHEMICAL COMPANY, Complainant, }
vs.
C. F. G. MEYER *et al.*, Defendants. }

Interrogatories to be Propounded to James H. Nelson.

Interrogatory 1. State your name, age, place of residence, and occupation.

Interrogatory 2. State where you lived in 1857 and 1858, and in what business you were in, and whether on your account or not, and, if in the employ of anybody, state in whose employ you were.

Interrogatory 3. If in answer to the last interrogatory you state that in any part of 1857 or 1858 you were in a drug store in the city of New York, state whether or not you have any recollection of selling a preparation called Ellis' Iron Bitters; and, if you have any such recollection describe how it was put up to the best of your recollection, giving all the details you can, and for what complaints it was sold for, to what extent it was sold, and by whom, and where it purported to be manufactured.

Interrogatory 4. Look at the preparation now exhibited to you and state whether or not it is the Ellis Iron Bitters referred to by you, if you have stated that you ever knew of such a preparation, and in your answer designate such Ellis' Iron Bitters or wrappers or both by Exhibit A to your deposition, and have the commissioner so mark it.

Interrogatory 5. State any other matter or thing within your knowledge or recollection which would be of benefit or advantage to either side of this case.

BOYLE, ADAMS & McKEIGHAN,
Solicitors for Defendants.

59 In the Circuit Court of the United States for the Eastern District of Missouri.

BROWN CHEMICAL COMPANY, Plaintiff,
vs.
C. F. G. MEYER *et al.*, Defendants.

Interrogatories to be Exhibited and Propounded to Jeremiah Sheehan in said Cause on Behalf of Defendants.

Int. 1st. State your name, age, residence, and occupation, and how long you have lived in Bridgeport, Connecticut.

Int. 2nd. Are you acquainted with any of the parties to this suit; and, if so, whom?

Int. 3rd. Were you ever acquainted with a firm or person doing business in Bridgeport, Connecticut, under the name and style of L. W. or L. W. Booth & Co.? If so, state who the members of that firm were and the style of the firm and what business they were engaged in and for how long, so far as you know, to the best of your recollection.

Int. 4th. If you have stated, in answer to interrogatory third, that you knew such a firm and that it was in the drug business, please state whether or not you ever were in the employ of such drug concern; and, if so, in what capacity and for how long, to the best of your recollection.

Int. 5th. If you have stated that you were in the employ of L. W. or L. W. Booth & Co. and that they were in the drug business, state what you know of said firm having, during its existence, for sale a preparation called Ellis' Iron Bitters. State fully what you know about it, where it was made, &c. Give a general description of the preparation, if there was such a preparation—what diseases it was sold for and for how long a period you knew said firm to have it for sale and to what extent.

60 Int. 6th. If you have before you a bottle of said Ellis' Iron Bitters or the wrapper formerly around same please make it a part of your deposition, marking it Exhibit "A."

Int. 7th. State whether or not the members of the firm of L. W. or L. W. Booth & Co. are now living; and, if dead, when did they die.

Int. 8th. If, in answer to the last interrogatory, you state that they are dead, state whether or not said business is conducted in same name and style; and, if so, by whom, and whether there are any of said Ellis' Iron Bitters still in the possession of and for sale by said present concern.

Int. 9th. State any other matter or thing which would be of benefit or advantage to either party to this suit.

BOYLE, ADAMS & McKEIGHAN,
Solicitors for Defendants.

61 *Interrogatories to be Exhibited and Propounded to F. S. Stevens, of Bridgeport, Connecticut.*

Int. 1st. State your name, age, residence, and occupation, and how long you have lived in Bridgeport, Connecticut.

Int. 2nd. Are you acquainted with any of the parties to this suit; and, if so, with whom?

Int. 3rd. Were you ever acquainted with a firm or person doing business in Bridgeport, Connecticut, under the name and style of L. W. or L. W. Booth & Co.? If so, state who the members of that firm were and the style of the firm and what business they were engaged in and for how long, so far as you know, to the best of your recollection.

Int. 4th. If you have stated, in answer to interrrogatory third, that you knew such a firm, and that it was in the drug business, please state whether or not you ever were in the employ of such drug concern; and, if so, in what capacity and for how long, to the best of your recollection.

Int. 5th. If you have stated that you were in the employ of L. W. or L. W. Booth & Co., and that they were in the drug business, state what you know of said firm having, during its existence, for sale a preparation called Ellis' Iron Bitters. State fully what you know about it, where it was made, &c.; give a general description of the preparation, if there was such a preparation, what diseases it was sold for, and for how long a period you knew said firm to have it for sale, and to what extent.

Int. 6th. If you have before you a bottle of said Ellis' Iron Bitters or the wrapper formerly around same, please make it a part of your deposition, marking it Exhibit "A."

Int. 7th. State whether or not the members of the firm of L. W. or L. W. Booth & Co. are now living; and, if dead, when did they die.

62 Int. 8th. If, in answer to the last interrogatory, you state that they are dead, state whether or not said business is conducted in the same name and style; and, if so, by whom; and whether there are any of said Ellis' Iron Bitters still in the possession of and for sale by said present concern.

Int. 9th. State any other matter or thing which would be of benefit or advantage to either party to this suit.

BOYLE, ADAMS & McKEIGHAN,
Solicitors for Defendants.

63 Depositions of witnesses produced, sworn, and examined on the 21st day of February, in the year of our Lord 1887, between the hours of two o'clock in the afternoon and nine o'clock in the evening of that day, at my office, in the city of Bridgeport, in the county of Fairfield and State of Connecticut, before me, a commissioner duly appointed by the circuit court of the United States for the eastern district of Missouri, and also a notary public in and for the State of Connecticut, in a certain cause now depending in the circuit court of the United States for the eastern district of Missouri between the Brown Chemical Company, complainant, and C. F. G. Meyer *et al.*, defendants, on the part of the defendants.

FREDERICK S. STEVENS, of lawful age, being produced, sworn, and examined on the part of the defendants, deposeth and saith:

1. To the first interrogatory he saith: My name is Frederick S. Stevens. I am thirty-seven years of age. I reside in the city of Bridgeport & State of Connecticut, and have resided here for the last twenty years. I am a wholesale and retail druggist.

2. To the second interrogatory he saith: I have no personal acquaintance with any of the parties to this suit.

3. To the third interrogatory he saith: I had a long personal acquaintance with L. W. Booth, of Bridgeport, Connecticut, who formerly carried on the wholesale and retail drug business in this city of Bridgeport under the name and style of L. W. Booth. To my personal knowledge Mr. Booth carried on the wholesale and retail drug business in Bridgeport for seventeen years. He died on the 25th day of October, A. D. 1883, and his drug business since that time has been carried on by the firm of L. W. Booth and Co.

64 I have no personal knowledge who constitute all the members of the firm of L. W. Booth & Co.

4. To the fourth interrogatory he saith: I entered the employ of L. W. Booth here in Bridgeport on April 1st, 1868, and remained in his employ until June, 1874. I was employed by him as a drug and prescription clerk.

5. To the fifth interrogatory he saith: All the time that I was so employed by Mr. Booth I remember well that he had for sale in his drug store a preparation called "Ellis' Iron Bitters." I have no knowledge where it was made other than as appeared on the label of the bottle. It was sold as a strengthening tonic and for enriching the blood and to be useful in all cases of general debility. To the best of my recollection, it had rather a limited sale.

6th. To the sixth interrogatory he saith: The bottle now shown to me, which I have marked "Exhibit A, Frederick S. Stevens," is the same preparation I have above referred and appears to be precisely the same that Mr. Booth had in his store for sale, and I hereby make it a part of my deposition.

7. To the seventh interrogatory he saith: I have already stated that Mr. L. W. Booth died Oct. 25, 1883.

8. To the eighth interrogatory he saith: As I have stated above, the drug business of L. W. Booth is now conducted by the firm of

L. W. Booth & Co., and I believe they now have "Ellis' Iron Bitters" in their possession and on sale in their store, although I have no personal knowledge of the fact.

9. To the ninth interrogatory he saith: The bottle of "Ellis' Iron Bitters" which I have marked "Exhibit A" has in the upper
65 right-hand corner of the label the cost and selling price of the same in lead pencil, made by John Booth, the brother of L. W. Booth, and who was in the store as clerk during the years that I was there.

FREDERICK S. STEVENS.

Subscribed and sworn to this 21st day of February, A. D. 1887, between the hours of two and four o'clock in the afternoon, before me—

[SEAL.]

CHAS. S. CANFIELD,
Commissioner and a Notary Public
for the State of Connecticut.

JEREMIAH SHEAHAN, of lawful age, being also produced, sworn, and examined on the part of the defendants, deposeth and saith:

1. To the first interrogatory he saith: My name is Jeremiah Sheahan. I am forty-eight years old. I reside in the city of Bridgeport, Connecticut; have resided here twenty-two years. I am now employed as drug clerk with the firm of L. W. Booth and Co.

2. To the second interrogatory he saith: I have no acquaintance with any of the parties to this suit.

3. To the third interrogatory he saith: I had a long personal acquaintance with L. W. Booth, who kept a drug store here in Bridgeport. He carried on the wholesale and retail drug business here in his own name. To my personal knowledge Mr. L. W. Booth carried on the drug business here in Bridgeport for nineteen years.

4. To the fourth interrogatory he saith: I entered Mr. Booth's employ as porter and drug clerk in the month of December, 1868, and remained with him until he died, in the month of Oct., 1883. From that time to the present I have been in the employ of L. W.
66 Booth & Co., who succeeded to the drug business of L. W. Booth.

5. To the fifth interrogatory he saith: For sixteen years at least I have seen the preparation called "Ellis' Iron Bitters" on the shelves of Mr. Booth's store. I cannot say where it is made. The sale of the preparation was rather small. We did not have much call for it. It was said to be a good blood medicine.

6. To the sixth interrogatory he saith: The bottle now shown to me is a bottle of said "Ellis' Iron Bitters" and was sold by me out of the drug store about two months ago. I have marked it "Exhibit A, Jeremiah Sheahan," and desire to make it a part of my deposition.

7. To the seventh interrogatory he saith: L. W. Booth died in October, 1883. Since his death the business has been carried on by the firm of L. W. Booth & Co.

8. To the eighth interrogatory he saith: Said business is now

conducted by L. W. Booth & Co., and they now have in the store for sale at least three bottles of this preparation called " Ellis' Iron Bitters," the same in appearance as the bottle marked " Exhibit A."

9. To the ninth interrogatory he saith: I do not now recall anything further that would be of any benefit to either party to this suit.

JEREMIAH SHEAHAN.

Subscribed and sworn to this 21st day of February, A. D. 1887, between the hours of 4 and 5 o'clock in the afternoon, before me—

[SEAL.] CHAS. S. CANFIELD,
Commissioner and also a Notary Public in & for the State of Connecticut.

JAMES H. NELSON, of lawful age, being also produced, sworn,
67 and examined on the part of the defendants, deposeth and saith:

1. To the first interrogatory he saith: My name is James H. Nelson. I am forty-six years old. I reside in the city of Bridgeport, State of Connecticut. I am a druggist.

2. To the second interrogatory he saith: In the years 1857 and 1858, 1859, 1860, 1861, 1862, 1863, and 1864 I resided in the city of New York. In May, 1857, I entered the drug store of J. and I. Coddington, corner of Washington Place and Broadway, as drug clerk, and remained in their employ between four and five years. I then entered the employ of a man by the name of Snyder, who carried on a drug store corner of Third avenue and Twenty-second street, and remained with him as a drug clerk some two years or so.

3. To the third interrogatory he saith: During the latter part of this time my best recollection is that I sold out of each of the said stores the preparation called " Ellis' Iron Bitters." In 1864 or 1865, I do not now recollect precisely which, I came to Bridgeport and entered into the drug business on my own account. I kept a drug store on Main street for several years. I am very positive that I kept for sale in my store here on Main street this preparation called " Ellis' Iron Bitters." It was put up in bottles holding about three-quarters of a pint, similar to a pint porter bottle, with a bulged neck. It was sold for a tonic generally. Its sale with me averaged the ordinary bitters—that is, it was somewhat limited. It purported to be made by William Ellis, of Philadelphia.

4. To the fourth interrogatory he saith: The preparation & the bottle now exhibited to me and which I have marked " Ex-
68 hibit A, James H. Nelson," is the preparation to which I have referred. I have no doubt of it.

5. To the fifth interrogatory he saith: I believe I have stated all that now occurs to me.

JAMES H. NELSON.

Subscribed and sworn to this 21st day of February, A. D. 1887,

between the hours of seven and nine o'clock in the evening, before me—

[SEAL.] CHAS. S. CANFIELD,
Commissioner and Notary Public for the State of Connecticut.

69 United States Circuit Court, Eastern District of Missouri.

BROWN CHEMICAL COMPANY }
against }
C. F. G. MEYER *et al.* }

Examination of E. L. Brown before C. H. Trimble, special examiner in said cause, on the 10th day of January, 1887, at Memphis, Tennessee, on behalf of the defendants.

Stipulation of counsel relating thereto and order of court appointing said C. H. Trimble examiner hereto attached.

Hon. B. M. Estes appeared and conducted the examination on behalf of the defendants and L. W. Humes, Esq., solicitor for the plaintiffs, appeared for the complainants.

E. L. Brown.

The witness, having been by the examiner duly cautioned and sworn, according to law, testified, in response to interrogatories propounded to him by solicitor for the defendants, as appears below:

Q. State your name, age, and place of residence.

A. My name is Eugene L. Brown; my age is 41 years, and my place of residence, Memphis, Tennessee.

Q. In what business are you engaged and at what place, giving the style of your business firm?

A. I am engaged in the wholesale drug business at Memphis, Tenn. The style of the firm with which I am connected is S. Mansfield and Co. The firm is composed of S. Mansfield, E. L. Brown (myself), and J. M. Wood.

Q. At what time did you begin business in Memphis as a member of the firm of S. Mansfield and Co.?

A. February 1st, 1884.

Q. Prior to your removal to Memphis, where did you reside and in what business were you engaged and with whom and under what partnership name?

70 A. I resided in Little Rock, Ark. I was engaged in the wholesale drug business with C. J. Lincoln under the firm name of Lincoln and Brown. We also did a retail business.

Q. Was the style of the firm first Lincoln and Brown?

A. It was first C. J. Lincoln and Co. and afterwards it was Lincoln and Brown.

Q. How long did you reside in Little Rock, and for how long a period were you a member of the firm of C. J. Lincoln and Co. and Lincoln and Brown?

A. Well, I don't know whether I ought to say that my residence began when my business began or not. I did not really go there

to reside until September, 1881. My business opened there May 1st, 1881. At least I did not go there to reside permanently until September.

Q. How long did you reside there from that time?

A. I resided there until the 1st of January, 1884.

Q. Please state now, Mr. Brown, in what business you were engaged prior to your removal to Little Rock, and state in a general way in what manner you conducted that business—in other words, what your duties were and how they were discharged.

A. I was engaged from August, 1869, to May 1st, 1881, as travelling salesman for the wholesale drug-house of R. A. Robinson and Co., of Louisville, Ky. My duties were to sell goods to any and all people that kept drugs—dealers, merchants, and druggists throughout the territory through which I travelled while representing that house.

Q. What was that territory?

A. Well, while representing that house I travelled principally in Alabama and Arkansas. I also travelled in Miss., West. Tenn., Southern Ky., and Eastern Texas.

Q. To what extent, if at all, did you become known in the drug trade in the South prior to your removal to Little Rock, and to what extent, if at all, had you become familiar with that trade?

A. I was very extensively known throughout the trade in
71 those sections and those States.

Q. To what extent had you become familiar with the trade yourself?

A. I was pretty thoroughly familiar, sir, with it. I knew the merchants personally, and knew about what they had invested in business and about how much they were entitled to in the way of credit, and so on, and I kept up with the commercial standing generally of the merchants and druggists in that country.

Q. State whether or not you know a medicinal preparation known as Brown's Iron Tonic, and also one known as Brown's Iron Bitters.

A. Yes, sir; I know both of those preparations.

Q. Please state what, if anything, you know of the origin and history of Brown's Iron Tonic, and give circumstantial statement of its origin and history.

A. I know all about the origin and history of Brown's Iron Tonic. While I was travelling for R. A. Robinson and Co. I was struck with the large amount of Harter's Iron Tonic that I sold, and I made up my mind that when I went into business for myself, which I expected to do at the first convenient opportunity, I would get out a preparation of iron to sell to the trade, knowing at the time that there was only one preparation, which was Harter's preparation, of iron that had any extended sale in the territory in which I travelled. On assuming active control of the business of C. J. Lincoln and Co. and reorganizing it in the fall of 1881 I proceeded to get up "Brown's Iron Tonic," "Brown's Hair Dye," "Kentucky Blue Grass Horse and Cattle Powders," "Carbolic Healing Salve," and like preparations. In getting up the "Iron Tonic" I carried out my preconceived plan of doing so upon entering upon business for myself.

Q. State whose formula it was.

A. The formula was gotten up by our chemist at my instance and submitted to me for approval by him and was approved by me.

Q. State to what extent you began to advertise and sell it.

72 A. Well, we commenced advertising it first in Arkansas, throughout that trade, in the newspapers—advertising it in the newspapers and by circulars—through our travelling agents, who were representing us all over the State pretty much. I continued to advertise and sell it as long as I was connected with the firm.

Q. When was your partnership with C. J. Lincoln dissolved, and in what manner was it dissolved?

A. It was dissolved in December, 1883, by my sale to C. J. Lincoln of all my interest in the firm, including my right and title to all proprietary articles owned by the firm, including "Brown's Iron Tonic."

Q. At the time you began the preparation and sale of "Brown's Iron Tonic" what preparations of iron for medicinal purposes were in the Southern and Southwestern markets, on sale?

A. As I stated before, Harter's was the principal preparation of iron.

Q. To what extent at that time was the preparation called Brown's Iron Bitters advertised and sold in those markets?

A. Well, I should say to a limited extent, if at all.

Q. State fully the reasons and purposes prompting you and C. J. Lincoln and Co. to adopt for your preparation the name "Brown's Iron Tonic," together with its wrappers, cartons, and packages.

A. Because I was well and, as I thought, favorably known throughout Arkansas to the drug trade—to the merchants and druggists—and also because I was the originator of the preparation.

Q. Was it to distinguish it as your own?

A. It was to distinguish it as my preparation of iron.

Q. Please describe the size and shape of the bottles in which C. J. Lincoln and Co. put up and sold "Brown's Iron Tonic;" also describe the wrappers and cartons in which your goods were put up and offered for sale in the market. If you can do so, please file, as a part of your examination, one of the wrappers on

73 "Brown's Iron Tonic," so that the examiner may designate it as "Exhibit No. 1."

A. The bottle used was what is known in the trade as a 14-oz. "cod-liver-oil bottle." The bottle was 10¼ inches tall, about 3 inches wide, and about 1⅞ thick, with a neck about 3½ inches long. The shape is what I would term flat. It was first put out with what we call a straw carton—a plain carton, as a protection, I might say—and then on top of that there was a white paper wrapper with black letters printed on it. The cartons first used had no lett-ing upon them, but the wrappers had.

Q. What is the description of the wrapper first put out and what did you have on that?

A. My recollection is, pretty much the same as this.

Q. What was the color of the wrapper?

A. White with black lettering.

Q. Now, Mr. Brown, state how long you continued to put up the medicine in that shape and when a change was made.

A. Perhaps six or eight months. I would not be positive.

Q. After you begun to make it?

A. Yes, sir; I then sent the wrapper to the Louisville Lithographing Company, of Louisville, Ky., and had them lithograph me a wrapper, the written matter and the lettering of which was the same as the first, but the ground of the label or color of the label was changed to a yellowish, iron color; that label was used up to the time I left. Since then I see they put it up in a carton of pasteboard, with the same lettering. I take that to be the same coloring and lettering from the fact that there is an error in this trade-mark; that error used to be in it when we used it, and I notice it here.

Q. What is the error?

A. The error is in failing to put a period after the letter "I" in the trade-mark. There should be a period there. I cannot
74 file one of the original wrappers. I have one of the cartons now used and I file it and mark it Exhibit No. 1 to my deposition.

Q. What is the trade-mark of Brown's Iron Tonic?

A. It is a Roman "B" with a large "I" and a Roman "T."

Q. State whether or not when you first began the preparation and sale of Brown's Iron Tonic you had a trade-mark and what it was.

A. Yes, sir; I had a trade-mark. The trade-mark was what I have just stated, "B. I T." Some time after I had this registered at Washington under the act of Congress.

Q. State whether or not there had been any change in the size and shape of the bottles since you first began the preparation and sale of Brown's Iron Tonic.

A. I think not, sir; it seems to be the same bottle.

Q. If you have a sample of the wrappers and cartons used on Brown's Iron Bitters please file the same as Exhibit No. 2 to this deposition, and state in what respect the two differ in size and shape of the bottles, color of medicine, wrappers, and cartons.

A. I have a sample of Brown's Iron Bitters, and file it as requested. I will state that I observe that Brown's Iron Bitters bottle has recently been changed in size, so that it holds more than it did, I should say, three or four months ago. I made that observation to-day. When I last measured it it held ten and a half ounces. Brown's Iron Bitters bottle before the late change was about eight and a half inches tall, two and one-fourth inches square, with a neck that was two and one-sixteenth inches in length. The color was what is commercially termed "amber," while the color of the bottle of Brown's Iron Tonic is what is termed "flint" or clear glass. The lettering is different on the wrappers. There is a difference in the ground of the paper, one being white—the ground of the wrapper of Brown's Iron Bitters is white—while the ground of Brown's Iron Tonic is yellow or a yellowish, iron color. On the front of the
75 wrapper or label of Brown's Iron Bitters are crossed red lines

extending from the top to the bottom. There is nothing of that kind on Brown's Iron Tonic. On Brown's Iron Bitters I also observe a lion's head with something that looks like a bar suspended in his mouth. There is nothing of that kind on the other. Also on Brown's Iron Bitters there is a picture of a woman encircled with a horseshoe, having inscribed on it "health and happiness." There is nothing of that kind on Brown's Iron Tonic. They also have on Brown's Iron Bitters what is called a trade-mark, "Quality, not quantity," with a Roman "P," and underneath "Purity." There is nothing of that sort on Brown's Iron Tonic. Other differences will be seen by comparing the two, which are filed.

Q. Now, please state, from your experience in the drug business and your observation for many years as a salesman, what the probabilities were of imposing Brown's Iron Tonic in the shape and with the characteristics that you observe upon purchasers in the market as and for Brown's Iron Bitters.

A. I should say it would be almost impossible to do so upon any observant person.

Q. State what idea or purpose, in relation to Brown's Iron Bitters or in imitating complainants' goods or in diverting their profits, you or your firm had in adopting the name "Brown's Iron Tonic" and in preparing your wrappers and cartons therefor and in putting the same on the market.

A. We had no idea or purpose, in relation to that preparation, in imitating their goods or in diverting their profits. The preparation was made and the wrappers adopted with a *bona fide* intention of distinguishing it as my product, and for none other.

Q. Now, please state in what instances or upon what occasions, if at all, Lincoln and Brown or C. J. Brown and Co., either one of them or any one of them, so far as your knowledge extends, at any time offered for sale or attempted to sell Brown's Iron
76 Tonic as or for Brown's Iron Bitters or in any manner imposed or attempted to impose the first-named preparation upon the market or upon purchasers as the last-named preparation or injured or attempted to injure complainants by fraudulently diverting complainants' profits in the sales of its medicines or otherwise. If any such practice came to your knowledge please state what it was and when and where it occurred.

A. No such practice ever occurred, to my knowledge. On the other hand, I will state that our salesmen were instructed to never substitute one for the other.

Q. Please state whether or not during your connection with the firm of C. J. Lincoln and Co. that firm had any correspondence with the Brown Chemical Co. in regard to a supposed infringement of the rights of the latter by C. J. Lincoln and Co. in the preparation and sale of Brown's Iron Tonic. If yea, please state when that correspondence occurred and by whom it was conducted on behalf of C. J. Lincoln and Co.

A. Yes, sir; there was such a correspondence. It occurred during the month of August, 1882, and I conducted it on behalf of C. J. Lincoln and Co.

Counsel for defendants here states that defendants have served a notice upon counsel for complainants in writing to produce at this examination the original of a letter written by C. J. Lincoln and Co., dated August 24th, 1882, and complainants have failed to produce it. Defendants here produce such notice and ask that it may be filed with the examiner as a part of this examination, and claim the right now to introduce secondary evidence of the contents of said letter.

Notice filed as Exhibit No. 3 to this deposition.

Q. State what the habit and practice of C. J. Lincoln and Co. was while you were with the firm in reference to keeping letter-press copies of their letters, and also in preserving letters received by them.

77 A. We had a letter-press and a regular letter-press letter book in which we copied all important letters. We also had a file in which we kept letters received, filed away from A to Z.

Q. State whether or not they made a copy of their letter to the Brown Chemical Co. on the subject last inquired about and preserved their response thereto.

A. Yes, sir; I wrote the letter and made the copy myself, and their response was duly filed and preserved.

Q. If you can do so please file a true copy of the letter of C. J. Lincoln and Co. to the Brown Chemical Co. on this subject and let the examiner mark it as Exhibit No. 4.

A. Yes, sir; I believe that to be a true copy. I file a true copy of the letter and marked it Exhibit No. 4.

Q. Well, now, if you have it please produce the letter of the Brown Chemical Co. in response to the letter of C. J. Lincoln and Co. and file the same as Exhibit No. 5.

A. I have in my possession and now produce the original letter of the Brown Chemical Co. in response to this marked Exhibit No. 5.

Q. Please read to the examiner said original letter and state what portions thereof are printed and what portions are in writing, it being agreed between counsel here present that the original may be retained by the defendants to be used in taking further depositions, but that it is to be filed on or before the hearing of the case.

A. I read. In print at the head of the letter is the following:

"Fertilizers. Brown Chemical Co., 629 Hanover street,
Baltimore, P. O. box 396,
August 28th, 1882."

The figure "2" is written; all else printed.

Trade mark: "Quality, not Quantity." Roman "P" with "Purity" underneath. "Patented May 21st, 1878."

"Drug Specialties."

Across the face in red type: "Removed to No. 16 Light street."

78 The letter in writing proceeds as follows:

"Messrs C. J. Lincoln and Co., Little Rock, Ark.

"GENTLEMEN: Enclosing your invoice, thank you for your kind and satisfactory letter. We wish Brown's Iron Tonic a success, as upon examination we cannot see where it can conflict with us except in the multiplicity of the Brown family.

"Your friends,

"BROWN CHEMICAL CO."

Stamped in red:

"Approved August 28th, 1882."

"W. S. Powell,"

"Brown Chemical Co."

Q. State how long and to what extent, if at all, you have had correspondence with the Brown Chemical Co. and what opportunities you have had for knowing the genuineness of their signature or the genuineness of the letters written by that company.

A. I have had correspondence with them since the spring or summer of 1882.

Q. What opportunities have you had?

A. I have had good opportunities, because I have had numbers of letters from them. Their handwriting is familiar to me.

Q. From those opportunities state whether or not you are prepared to testify to the genuineness of its letters, and state whether or not this letter of August 28th, 1882, is genuine.

A. Yes, sir; I regard myself as competent to testify. I am satisfied it is a genuine letter.

Q. State whether or not you have ever seen this letter before and about when you first saw it.

A. Yes, sir; I saw it, I should say, four or five days after it was written, as soon as the mail could bring it to Little Rock. It came by mail.

Q. To whom did it come by mail.

79 A. It came to C. J. Lincoln and Co.

Q. To what letter is it a response?

A. To our letter of August 24th, 1882, a copy of which is filed.

Q. In your letter of August 24th, 1882, you say: "We send to you a bottle by to-day's express, freight paid, in order to show you our goods." Please state what was actually done by you or C. J. Lincoln and Co., as indicated in this letter, and who did it.

A. Upon receipt of the letter from the Brown Chemical Co., written a few days prior to the letter of C. J. Lincoln and Co. of the 24th of August, asking us if we had not infringed on their rights in manufacturing Brown's Iron Tonic, our letter of the 24th of August was sent, and also a sample bottle of Brown's Iron Tonic was forwarded to the Brown Chemical Co. by express, as indicated in the letter of the 24th.

Q. Have you a copy of the letter of Brown Chemical Co. to which your letter of the 24th is a response?

A. I have not. No doubt C. J. Lincoln and Co., at Little Rock, have it.

Q. In what respect, if at all, does the size and shape of the bottles of Brown's Iron Tonic, and also of the coloring and labels in the margin, as now shown by your exhibit, differ from the size and shape of the bottles and the coloring and lettering of the labels at the time you sent this bottle to the Brown Chemical Co.?

A. The size and shape of the bottle is the same as the sample, to the best of my knowledge. I cannot remember whether at that particular time this change had taken place in the ground-work—the first change. The lettering and all I believe to be the same. The trade-mark I know to be the same. Of course, it would be very difficult for me to say that it all was the same. I cannot say positively about that.

Q. What, if anything, do you know of iron as a medicinal remedy? And, if you know, please state about how long it has been in use as such amongst physicians and druggists.

80 A. I know it is a very popular remedy in medicine, and has been in use amongst physicians and druggists ever since my knowledge of the drug business commenced. I have been in the drug business since about 1866. I have known of iron in the trade all that time, and the books that I have read indicate that it dates back of that.

Q. State whether or not since December, 1883, you have had any interest in Brown's Iron Tonic.

A. I have not.

Q. What was the significance of the large Roman letters "B. I. T." in the trade-mark which you adopted for Brown's Iron Tonic, and what was your *bona fide* purpose and intent in using those letters in that shape in the trade-mark?

A. These letters were simply the initial letters of Brown's Iron Tonic, and this was their significance. The *bona fide* purpose of using these letters in that shape was only to designate and give prominence to the initial letters.

Q. State whether or not you or C. J. Lincoln and Co. had any other purpose or intent in adopting these letters in the trade-mark, and especially whether or not you had any idea or purpose in relation to Brown's Iron Bitters.

A. None whatever.

Q. Please state whether or not in adopting these letters in the trade-mark you intended them to stand for or be read or understood as an abbreviation of the word "bitters."

A. No, sir; I never thought of them in that connection until it — suggested a few days ago.

E. L. BROWN.

John R. Tague.

At the same time and place and in the presence of the same counsel, before the same examiner, JOHN R. TAGUE was produced and

cautioned and sworn by the examiner as a witness on behalf of the defendants in the same case.

In response to interrogatories propounded by Mr. ESTES he
81 testified as appears below:

Q. Where do you live?
A. I live in Memphis, Tennessee.
Q. What is your business?
A. I am a druggist.
Q. In whose employment?
A. In the employment of S. Mansfield and Co.
Q. What is your age?
A. Twenty-seven years.
Q. Were you ever in the employment of C. J. Lincoln and Co., Little Rock?
A. Yes, sir.
Q. During what period?
A. 1883, between February and the 1st of January following. I went to work for them in February, 1883.
Q. You remained with them until the succeeding January?
A. I staid, I believe, until nearly the 1st of January, 1884.
Q. What, if anything, do you know of the manufacture and sale by C. J. Lincoln and Co. while you were there of Brown's Iron Tonic?
A. I know they manufactured Brown's Iron Tonic and sold a good deal in the market.
Q. What position did you hold with C. J. Lincoln and Co.?
A. I was prescription clerk in the retail department and had charge of the retail trade.
Q. State whether or not C. J. Lincoln and Co. sold also Brown's Iron Bitters.
A. Yes, sir.
Q. State whether or not during the time you were in their employment you sold at any time Brown's Iron Tonic for Brown's Iron Bitters or attempted to do so.
A. I never did; no, sir.
Q. What instructions, if any, did you have from the firm of C. J. Lincoln and Co. upon that point?
A. I had no instructions at all.
Q. Do you know anything about a change in the size of the bottle of Brown's Iron Bitters.
A. I know while I was at Little Rock we measured the bottle once and found it contained ten ounces and a half. Mr. Brown
82 and I measured a bottle to-day and found it held 12 ounces; so it would seem to have been changed. The change has probably been made lately. Our last shipment was this size. We get a shipment about every two months.
Q. Do I understand you that to-day, in the store of S. Mansfield and Co., you opened two bottles?
A. No, sir; we only opened one. We opened two about three or four weeks ago—five or six, perhaps.

Q. That you opened five or six weeks ago was the former shipment?

A. Yes, sir.

Q. That contained how much?

A. I did not measure it. It was considerably less, though, than the one they are putting up now. They appeared to be the same size as the one I measured at Little Rock, holding 10 ounces and a half.

JOHN R. TAGUE.

The further taking of depositions herein was at this point continued till January 11th, 1887, to be resumed at 3 p. m. at the same place.

C. H. TRIMBLE.

MEMPHIS TENNESSEE, *January 11th*, 1887.

At the hour of three o'clock p. m., pursuant to adjournment, the further taking of depositions herein was resumed, the same counsel for both parties being present.

M. B. SHELLY was produced as a witness for defendants and by the examiner duly cautioned and sworn. In response to interrogatories by Mr. ESTES he testified as appears below.

C. H. TRIMBLE.

Q. What is your name?

A. M. B. Shelly.

Q. What is your age and occupation?

A. I am 27 years of age and a druggist by occupation.

83 Q. What is your place of residence?

Memphis, Tennessee.

Q. In whose employment are you in Memphis and how long have you been there?

A. I am in the employment of G. W. Jones and Co.

Q. What is their business?

A. Wholesale druggists.

Q. In Memphis?

A. Yes, sir.

Q. What department of the business have you charge of?

A. I have charge of the manufacturing department.

Q. Have you received any education to prepare you for your business; and, if so, what?

A. Yes, sir; I am a graduate of the Louisville College of Pharmacy.

Q. A regular pharmacist?

A. Yes, sir.

Q. How long did you say you had been engaged with G. W. Jones and Co.?

A. Since August, 1886.

Q. State where you were in business between the years 1881 and 1882.

A. For C. J. Lincoln and Co., Little Rock.

Q. For what period were you engaged with them and in what department of their business?

A. I don't remember the exact length of time—about three years.

Q. About what time did you leave their employment?

A. About the 1st of January, 1884.

Q. In what department of the business were you engaged with C. J. Lincoln and Co. and what were your duties?

A. I did manufacturing and shipping and assisted in the filling of orders and filling prescriptions in the retail department.

Q. As a pharmacist and in your education as such what knowledge did you acquire as a chemist?

A. Well, all graduates of pharmacy take an analytical course in chemistry.

Q. State whether or not you know anything of a medicinal preparation called Brown's Iron Tonic.

A. Yes, sir; I originated the formula.

84 Q. When and at whose instance?

A. At the instance of Mr. Eugene L. Brown.

Q. When?

A. Some time in 1881 or 1882—I cannot remember the exact time—at Little Rock.

Q. At that time did you originate the formula for Brown's Iron Tonic at the instance of Eugene L. Brown?

A. Yes, sir.

Q. At that time, state to what extent, if at all, Brown's Iron Bitters were advertised and sold in the Southern and Southwestern markets.

A. In our market they had not been sold at all. I don't think we had the preparation in the house.

Q. Do you know, generally, to what extent it was in the market in the South and Southwest? Have you any information about it?

A. No, sir.

Q. What preparation was the chief competitor of Brown's Iron Tonic at the time it was first put upon the market?

A. Harter's Iron Tonic.

Q. At the time Mr. Brown called upon you to make the formula for Brown's Iron Tonic state whether or not there was anything said in reference to Brown's Iron Bitters.

A. No, sir; nothing that I can remember.

Q. So far as you know, did the preparation and sale of Brown's Iron Tonic have any reference to Brown's Iron Bitters with a view of competing with them or imitating them, so far as you know?

A. It was upon the market to compete with all preparations of iron, and not specially with that preparation.

Q. If you know, state why the preparation was called Brown's Iron Tonic. Was it for the purpose of designating the article in good faith and to distinguish it from other articles?

A. To distinguish it from other articles; yes, sir; and because Mr. Brown originated it. He was the one that proposed it, and it was named as a compliment to Mr. Brown.

Q. Was Mr. Brown at that time a partner in the house of
85 C. J. Lincoln and Co.?

A. Yes, sir.

Q. It appears in the testimony in this case that in August, 1882, C. J. Lincoln and Co. wrote a letter to the Brown Chemical Co. of Baltimore, in which it is stated that a bottle of Brown's Iron Tonic had been sent to them for inspection by express. What, if anything, do you know about the sending of the bottle of Brown's Iron Tonic, about that time, to the Brown Chemical Company for their inspection?

A. I know that such a bottle was sent. I put it up myself and shipped it. I put up the package and shipped it myself.

Q. Put the package up and shipped it yourself by express?

A. Yes, sir.

Q. You remember that distinctly, do you?

A. Yes, sir.

Q. In the preparation of the formula for Brown's Iron Tonic state whether or not there was any attempt upon the part of either Mr. Brown or yourself to use the ingredients that were used in Brown's Iron Bitters or to simulate or imitate Brown's Iron Bitters in any respect.

A. No, sir; not at all.

Q. Did you ever analyze Brown's Iron Bitters to know what the ingredients are?

A. No, sir.

Q. Are you prepared to state, as a chemist, whether or not the ingredients used in the formula for Brown's Iron Tonic were the same or similar to those used in Brown's Iron Bitters?

A. I could not state it, simply because I have never examined Brown's Iron Bitters but once.

Q. From that examination would you say that they are the same or different?

A. I should say that they are entirely different.

Q. Did you ever while you were in the employment of C. J. Lincoln and Co. substitute Brown's Iron Tonic for Brown's Iron Bitters when the latter was ordered?

A. No, sir; never.

Q. Were you ever instructed by them, in any instance, to substitute one for the other?

A. No, sir.

86 Q. How long has iron been known as a medicinal agent amongst druggists and physicians?

A. I could not state how long; but I know it has been used long, long before my time. It is one of the oldest and best-known medicinal agents.

Q. State whether or not there are many kinds of iron used in medicine.

A. There are a great many; yes, sir.

Q. Have you any interest in this litigation?

A. Not the slightest.

M. B. SHELLEY.

The further taking of these depositions was this day adjourned to Monday, the 24th day of January, 1887, pursuant to stipulation of counsel, hereto attached, the 23d of said month of January falling upon Sunday.

C. H. TRIMBLE.

MEMPHIS, TENN., *Jan'y 24th*, 1887.

The taking of these depositions was this day resumed at the same place, pursuant to adjournment, and L. W. Humes, Esq., appearing as solicitor for the complainants, and B. M. Estes, Esq., appearing for the defendants, and, both counsel consenting thereto, the further taking of these depositions was adjourned till Wednesday, the 26th of January, 1887, to be then resumed at 3.30 p. m., at the office of C. H. Trimble, at No. 31 Madison street.

C. H. TRIMBLE.

E. L. Brown Recalled.

MEMPHIS, TENNESSEE,
No. 31 MADISON STREET, *Jan'y 26th*, 1887.

The further taking of the depositions herein was this day resumed according to adjournment. Mr. B. M. Estes, solicitor for the defendants, appeared, and also Mr. L. W. Humes, solicitor for the complainants; and Mr. E. L. Brown being again placed
87 upon the stand for cross-examination the following interrogatories, numbered from 1 to 21, inclusive, were then propounded to the said witness.

C. H. TRIMBLE.

United States Circuit Court, Eastern District of Missouri.

BROWN CHEMICAL COMPANY
vs.
CHRISTIAN F. G. MEYER *et al.* } In Equity.

Complainant's counsel enters an objection to all the statements of Eugene L. Brown in regard to the "ideas," "purposes," and "reasons" which the witness says prompted him and Lincoln & Co. to undertake the manufacture and sale of "Brown's Iron Tonic," on the ground that such statements are incompetent, immaterial, and irrelevant.

Also to the statement of said Brown concerning any "preconceived plan" of getting up an iron preparation for the same reasons; and notice is hereby given of a motion to strike such statements from the record.

Cross-Interrogatories to be Propounded to Eugene L. Brown.

X Q. 1. You say that you were engaged in business with C. J. Lincoln under the firm name of C. J. Lincoln & Co., and subsequently under the firm name of Lincoln & Brown. Give the date when the name Lincoln & Brown was adopted.

X Q. 2. In one of your answers you say "on assuming active control of the business of C. J. Lincoln & Co., in the fall of 1881," I "proceeded to get up" "Brown's Iron Tonic." What do you mean by the expression "proceeded to get up?"

X Q. 3. Please give the date when the first sale was made of Brown's Iron Tonic.

X Q. 4. Please give any facts or circumstances which enable you to fix the date.

88 X Q. 5. Who devised the first wrapper used on "Brown's Iron Tonic?"

X Q. 6. Who ordered it to be printed?

X Q. 7. Give the name of the person or persons who printed the first lot.

X Q. 8. C. J. Lincoln and yourself made an affidavit at the time the trade-mark "B. I. T." was registered at Washington?

X Q. 9. The statements contained in that affidavit were true, were they not?

X Q. 10. Did you send with that application fac-similes of "the wrapper first put out," or of the later one printed by the Louisville Lithographing Co.?

X Q. 11. I show you a specimen of a wrapper (showing witness wrapper hereto attached, marked A. B. C). Did you send wrappers or fac-similes like this to Washington?

X Q. 12. Please explain why you sent the wrappers you did to Washington at the time you made your registration.

X Q. 13. You speak of an error in the trade-mark, which consists in the omission of a period after the letter "I." Did you frequently observe this error?

X Q. 14. It does not occur in the label which has just been shown you, does it?

X Q. 15. Please give the date, as nearly as you can, when the Louisville Lithographing Co. sent you a label of the yellowish kind which they printed for you.

X Q. 16 You say that at the time you got up Brown's Iron Tonic you also originated "Brown's Hair Die," "Kentucky Blue Grass Horse & Cattle Powders," "Carbolic Healing Salve," &c. Did you get up a trade-mark for each one of these preparations? If you did, please describe each trade-mark.

X Q. 17. You say you commenced advertising "Brown's Iron Tonic" in Arkansas. Please give the date of the first adver-

89 tisement of which you have knowledge and the names of newspapers in which "Brown's Iron Tonic" was first advertised.

X Q. 18. Please give the date, as nearly as you can, when C. J. Lincoln & Co. began to sell Brown's Iron Bitters.

X Q. 19. Are the directions on the label which is pasted on the bottle of Brown's Iron Tonic the same as they were originally?

X Q. 20. You say your salesmen were instructed to never substitute Brown's Iron Tonic for Brown's Iron Bitters. Please state what instructions were given them, as far as you know.

X Q. 21. Have you given the dates requested as nearly as you are able to?

And the said witness answered each of the said interrogatories in succession, as appears by the following answers, numbered from 1 to 21, inclusive, each answer being given in response to interrogatory of the corresponding number.

C. H. TRIMBLE.

A. The firm of Lincoln and Brown was adopted May 1st, 1883.

2 X A. By the expression "get up Brown's Iron Tonic" I mean that I proceeded to have gotten up the formula for the manufacture and the material for the manufacture.

3 X A. It would be impossible for me to give the date of the first sale of Brown's Iron Tonic unless I were in Little Rock, and then I don't know that I could give it to you. It was shortly after I had the formula gotten up.

4 X A. I could not give any facts or circumstances that would enable me to fix the date, unless I was at Little Rock, where I could see the books and bills for material purchased.

5 X A. My recollection is that I devised the first wrapper used on Brown's Iron Tonic.

90 6 X A. I ordered it to be printed.

7 X A. My recollection is that the Union Printing Company of Little Rock printed the first lot.

8 X A. I cannot remember who made the affidavit at the time the trade-mark was registered—whether Mr. Lincoln or myself.

9 X A. The affidavit is not before me, therefore I cannot speak intelligently about it. I suppose it was true.

10 X A. My recollection is that the wrapper first printed was sent, but I am not positive on that.

11 X A. That looks like the old wrapper. I could not say positively that that was the wrapper sent to Washington. This looks like a part of the old wrapper.

12 X A. I think I sent the wrapper to Washington under the advice of the attorney in Washington who had it in charge. My recollection is we sent the matter first to Senator Garland, and he recommended some attorney there to us, and it was sent by his advice.

13 X A. The error of the omission of the period after the letter I was made by the lithograph company in Louisville. I observed it after it was done. I cannot say how frequently I observed it. I did not regard it of enough importance to incur the expense of changing it.

14 X A. The error does not occur in the label which has just been shown me.

15 X A. I would have to be in Little Rock to give the date when the Louisville Lithograph Company sent me the label of the yellowish kind spoken of. It would be mere guesswork for me to attempt to answer now. Books and letters in Little Rock will show the date accurately.

16 X A. I did not get up a trade-mark for the things mentioned

in the interrogatory, to wit, Brown's Hair Dye, Kentucky Blue Grass Horse and Cattle Powders, and Carbolic Salve.

91 17 X A. I could not give the date of the first advertisement in Arkansas. I can give some of the papers in which we advertised. We advertise in the Arkansas Gazette and the Arkansas Democrat. I don't remember what other papers. Those I have named are the main papers in the State, though.

18 X A. I could not give the date when C. J. Lincoln and Co. first began to sell Brown's Iron Bitters. The books at Little Rock will show that.

19 X A. I cannot state positively whether the directions on the label are the same now as when we first began manufacturing them. I have not a copy of either label before me.

20 X A. My recollection is that the salesmen were instructed to give a man whichever preparation he wanted.

21 X A. I have given the dates asked for as nearly as I am able to.

Re-examination by B. M. ESTES, Esq.:

Q. Please state why you did not get up a trade-mark for the articles mentioned in the sixteenth cross-interrogatory, as well as for Brown's Iron Tonic.

A. Because I did not regard them of sufficient importance. They were cheap articles in their character.

Q. Is this the only reason?

A. That is the only reason. They were something that could be sold, too, without so much expense as the other—in the way of advertising, and so on. The horse and cattle powders were put up in a desirable sized package, and would sell without so much advertising, and the same rule applies to the other articles. You could sell carbolic salve of almost any make, and hair dye of the 25-cent size would also sell readily. A great many drug-houses have their preparations of that character.

Further this deponent saith not.

E. L. BROWN.

92 M. B. SHELLEY recalled:

And thereupon the witness, B. M. Shelley, was again placed upon the witness stand and the three following cross-interrogatories were propounded to him, numbered respectively from 1 to 3, inclusive, to which he made answers as appears upon the page succeeding the said interrogatories, which answers are numbered respectively 1, 2, and 3.

C. H. TRIMBLE.

Cross-Interrogatories to be Propounded to N. D. Shelley.

X Q. 1. You say that you originated the formula of Brown's Iron Tonic "some time" in 1881 or 1882? Can you give the date more exactly?

X Q. 2. How long after the formula originated was "Brown's Iron Tonic" put on the market?

X Q. 3. Is it or not true that "Brown's Iron Tonic" will not blacken the teeth?

Cross Examination of B. M. Shelley.

1 X A. I cannot give the date of the time of originating the formula more exactly, because I had nothing to impress it on my memory at that time.

2 X A. Brown's Iron Tonic was put on the market soon after the formula was originated. I cannot give the date more exactly.

3 X A. Brown's Iron Tonic will not blacken the teeth.

Further the deponent saith not.

M. B. SHELLEY.

(Here follow labels marked pages 92¼, 92½, 92¾.)

93 EXHIBIT No. 3 TO DEPOSITION OF E. L. BROWN.

In the Circuit Court of the United States, Eastern District of Missouri.

BROWN CHEMICAL COMPANY, Plaintiff,
vs.
C. F. G. MEYER *et al.*, Defendants.

To said complainant and *his* solicitors of record:

You are hereby notified to produce at the examination of E. L. Brown before C. H. Trimble, at Memphis, Tennessee, appointed special examiner herein, the original of a letter written by C. J. Lincoln & Co., at Little Rock, Arkansas, dated August 24th, 1882, directed to and received by said Brown Chemical Company, at Baltimore, Maryland, and in reply to which you wrote the letter of August 28th, 1882, set out in the answer herein. Unless so produced secondary evidence will be given of its contents by copy of same or verbally.

BOYLE, ADAMS & McKEIGHAN,
Solicitors for D'f'ts.

Received copy of above notice this 4th day of January, 1887.
REX & MOODY,
Solicitors for Pl'ff.

94 EXHIBIT No. 4 TO DEPOSITION OF E. L. BROWN.

Copy.

C. J. Lincoln, druggist, wholesale, No. 113 & 115 East Markham street.

LITTLE ROCK, ARK., *Aug.* 24, 1882.

Brown Chemical Co., Baltimore, Md.

GENTLEMEN: We have your favor of the 21st inst., & enclose here-

BROWN'S IRON TONIC

Does Not Blacken the Teeth.

B. I. T.

with certificate duly signed, as requested. As we had signed a duplicate when mailing a remittance to you some time since, we did not think it necessary to send a certificate with each remittance. However, we will observe your rule in the future. Please send us 1 gro. Brown's Iron Bitters.

In reply to your inquiry in regard to "Brown's Iron Tonic," we will say that we commenced manufacturing it since admission of Mr. E. L. Brown into our firm—May, 1881—together with Brown's Hair Dye and other preparations under his name. This was before you commenced your vigorous system of advertising, and before your goods were much, if any, sold here.

Our tonic is put up in 14-oz. cod-liver-oil panels and has no similarity to yours, either in appearance of the pack'g or the preparation. We send you a bottle by to-day's express, fr't paid, in order to show you our goods. We can, in turn, assure you that we have no desire to infringe in any way upon your good reputation, and have never attempted to sell our Iron Tonic when yours was called for, either in our retail or wholesale department.

Mr. Brown, of our firm, traveled thirteen years in this State (twelve years for R. A. Robinson & Co., Louisville, Ky.) and is well
95 known throughout the State, and for that reason we have used his name in connection with several of our proprietary articles.

Hoping this explanation will be satisfactory, and with regards, we remain,

Truly yours, C. J. LINCOLN & CO.

"Copy."

96 In the Circuit Court of the United States for the Eastern District of Missouri.

BROWN CHEMICAL CO.
vs.
CHRISTIAN F. G. MEYER *et al.* } No. 2651.

Testimony taken before L. L. Walbridge, special examiner, appointed by the circuit court of the United States for the eastern district of Missouri in the above-entitled cause, at the office of Messrs. Boyle, Adams and McKeighan, No. 322 Pine street, on February 15th, 1887, at which time there were present Benj. F. Rex, on behalf of the complainant, and J. E. McKeighan, on the part of the defendant.

CHARLES J. LINCOLN, being called and sworn on behalf of the defendant, testifies as follows:

(By Mr. MCKEIGHAN:)

1 Q. State your name, age, and place of residence.

A. My name is Charles James Lincoln; I am 53 years old; I live at Little Rock, Arkansas; I am a wholesale and retail dealer in drugs.

2 Q. How long have you lived in Little Rock, Arkansas?
A. I have been there 30 years the last of January.
3 Q. How long have you been in the drug business?
A. I have been in the drug business about 35 years.
4 Q. What has been the character of your business during that period in reference to the wholesale or retail trade?
A. I have been in the wholesale and retail altogether; prior to 1868 I was in the wholesale and retail altogether, and since 1868 I have been wholesaling, more or less.
5 Q. State whether or not you have handled patent medicines of various kinds.
A. Yes, sir; we handle all of the medicines called for in our
97 section of the country—in the South.
6 Q. And have you always?
A. Yes, sir; we handle large lines of patent medicines—almost every variety—so numerous that it is almost impossible to enumerate them.
7 Q. State whether or not you know E. L. Brown, now of Memphis, Tennessee.
A. Yes, sir; I know E. L. Brown. He was a partner of mine. I know him very well.
8 Q. How long have you known him?
A. I have known him for 15 years, I guess; maybe longer.
9 Q. State whether or not he was ever connected with you in business; and, if so, in what way.
A. He was a partner of mine and Welches' in 1872, and in 1874 we burned out and bought him out afterwards in 1879. He became a partner of mine in the first of May, 1881, and he was with me until December 10th, 1883, when I bought him out again.
10 Q. State what the style of the firm was during the time you and Mr. Brown were in partnership.
A. When he was first partner he was not with us. He merely had some money in there and was travelling. That is in 1872 to 1874. The firm was C. J. Lincoln & Co. In 1881, when he bought an interest, the firm was C. J. Lincoln & Co. for two years, and then the firm was changed to Lincoln & Brown until the time he went out, which was only a short time.
11 Q. How long was he in with the firm of Lincoln & Brown?
A. Eight months and 10 days—from the first of May to December 10th.
12 Q. State whether or not while the firm was C. J. Lincoln & Co. he was a secret partner or whether it was known.
A. It was known.
13 Q. He was recognized openly as a partner?
A. He was advertised as a partner—the firm consisting of C. J. Lincoln and E. L. Brown.
98 14 Q. State what preparation of iron, if any, the firm of Lincoln & Co. made and sold on the market.

Complainant's counsel objects to the question as irrelevant and leading.

A. We made Brown's Iron Tonic; the only proprietary preparation of iron that we made. We made a great many preparations of iron, but only one that we called proprietary medicine, which is different from the regular routine medicines.

15 Q. Brown's Iron Tonic?

A. That was the only proprietary iron preparation we made.

16 Q. Have you or not read a certified copy of the bill and answer in this case.

A. Yes, sir.

17 Q. State whether or not the Brown's Iron Tonic that you refer to has any connection with the Brown's Iron Tonic referred to in the bill and answer in this case; whether it is the same or not.

A. I think it is.

18 Q. What other Brown's Iron Tonic did you or Mr. Brown ever prepare and sell?

A. Not any.

19 Q. Only the one in controversy here?

A. Yes, sir.

20 Q. You may give in detail how you and Mr. Brown came to manufacture and sell such preparation and when?

Complainant's counsel objects to the question as incompetent.

A. Well, Mr. Brown, before we went into the business of making a line of proprietary medicines under his name—I objected to it because I didn't think there was any money in it; but after we went into the business he insisted on it, and along in the fall—I think in October—they commenced making a preparation—we had one or two preparations that we had made already prior to that—and we commenced to make the Iron Tonic and commenced selling it.

21 Q. When was that?

A. That was in October, 1881.

22 Q. State what steps you took to introduce it to the public.

99 Complainant's counsel objects to the question as immaterial and irrelevant.

A. We advertised it in our papers later on and we put it in our price-lists, and we commenced pushing it considerably and sold a good deal of it. In the first place we had sold but little, the price being too high. We held the price at $8, and it was not advertised and didn't go very well in the spring, but in the summer or the next spring we put the price at $6.00.

23 Q. What year was that?

A. 1882, and it sold better. We didn't advertise it very extensively at any time—not much until 1883. We advertised it more in 1883, '84, and '85.

24 Q. How did you advertise it?

A. We advertised it by circulars and price-lists and newspaper advertising.

25 Q. State how much money had been spent by C. J. Lincoln & Co. while it was composed of yourself and Mr. Brown and also Lincoln and Brown and yourself since in advertising altogether.

Counsel for the complainant objects to the question as irrelevant and incompetent.

A. About $15,000.

26 Q. State what amount of money has been made either by yourself or by the firm as profit in the manufacture and sale of this medicine.

Complainant's counsel objects to the question as calling for evidence which is irrelevant and incompetent.

A. As near as I can make it out, about $15,000. That is just about the profit. That is what I started out to do.

(By Mr. REX:)

27 Q. That is, during the time the firm existed?

A. No, sir; up to the first of this year.

(By Mr. MCKEIGHAN:)

28 Q. State what you mean by making $15,000 in reference to the amount spent in advertising—whether that is in excess of advertising.

100 Counsel for complainant objects to the question as calling for evidence that is incompetent and irrelevant.

A. I estimate about $15,000 profit on the goods, and I spent it in advertising.

29 Q. Now, have you any of your advertisements with you?

A. I have some.

30 Q. State what you have in your hand now.

A. Those are local notices that we had printed to send to the newspapers, so as a man travelled around to sell the goods he made contracts to advertise with the newspapers, and would send them these locals to put in the paper, changing them weekly.

Complainant's counsel objects to all evidence as to the advertisements as incompetent and irrelevant.

31 Q State whether you are willing to have this marked by the examiner and attached to your deposition as a part of the same.

A. I am.

(Papers referred to offered in evidence and marked Exhibits 1 and 2.)

32 Q. State what this is that you hold in your hand.

A. Those are local notices—local advertisements.

33 Q. What were they put in?

Objected to as incompetent and irrelevant.

A. One-line advertisements put in the papers; scattering them along as one-line advertisements.

34 Q. Are you willing to have this slip made a part of your deposition?

A. Yes, sir.

(Paper offered in evidence and marked Exhibit 3.)

35 Q. You may state what sized bottle was selected to put your preparation in of Brown's Iron Tonic.

Objected to as irrelevant.

A. It was a 14-ounce cod-liver-oil bottle; held 14 ounces, generally marked 16 ounces.

36 Q. State what change, if any, was made since in the
101 size of the bottle.

Objected to as irrelevant.

A. I made no change in the size of the bottle. We are putting up the same size that we did when we started.

37 Q. State what this paper is that you hold in your hand.

A. This is the old wrapper—the first wrapper that we put up the preparation in.

38 Q. What is that which I now show you?

A. That is a carton; I think they call it straight-board carton.

39 Q. What is a carton?

A. It is a paper box, I believe.

40 Q. State whether you are willing to have this wrapper and carton made a part of your deposition.

A. Yes, sir.

(Offered in evidence and marked Exhibit 4.)

41 Q. State whether or not you ever made any change in the wrapper, as shown by Exhibit 4.

A. Yes; we made a change, I think, in June, 1883, as near as I can remember. I can get the date from a letter-book. It was June or July, 1883. We had a colored wrapper made, which we thought was better looking, and used that until after Brown went out, and then I changed it again.

42 Q. Is this the wrapper that you changed for that you hold in your hand?

A. Yes, sir; this is a sample; that was 1883.

43 Q. Are you willing to have that attached to your deposition?

A. Yes, sir.

(Paper offered in evidence and marked Exhibit 5, and attached to this deposition.)

(By Mr. REX:)

44 Q. You first used a white wrapper like this, and then changed to that?

A. Yes, sir.

45 Q. State if you ever made any other change.

A. There is no change in the wrapper of any importance; just changed it to a carton because of the troublesome wrapping; the wrapper is the same, except that it is all ready, a carton, as we put them up faster in this, and the other is put up in a carton,
102 wrap, and this can be put in and fitted right to it.

46 Q. Is there a change in the color?

A. Yes; but we didn't intend a change. We ordered the same, but they didn't get it exactly the same in color.

47 Q. That is the difference between Exhibit 5 and the one you now hold in your hand?

A. This is a little higher color. We sent them one of these, Exhibit 5, to make it by, but they didn't get it the same.

48 Q. Whatever change there is in the color between Exhibit 5 and the last wrapper you speak of, state how it came about.

Objected to as incompetent and irrelevant.

A. It came about by the man who made the carton not getting it exactly the color I sent him a sample of, but it is so near it it answered our purpose and we never complained.

49 Q. What direction did you give, if any, about a change in the color?

A. Didn't give any directions. We sent him Exhibit 5 and asked him to make a carton just like it, so that we could put a bottle in without wrapping.

(Paper referred to marked Exhibit 6.)

50 Q. State when you first began to use Exhibit 6 as a wrapper and carton.

Objected to as incompetent and irrelevant.

A. About 1885. I don't remember exactly the time.

51 Q. State whether or not you have used Exhibit 6 ever since.

Objected to as leading and irrelevant.

A. Yes, sir; we have.

52 Q. State what wrapper and carton you have used since the change in 1885.

A. The last—Exhibit 6.

53 Q. Please look at the package marked C—filed October 4, 1886; A. P. Selby, clerk—and state what that package is.

A. That is a package of Brown's Iron Tonic put up in a
103 carton like Exhibit 6.

54 Q. State what the words on this package—"B. I. T.," "Does not blacken the teeth," and "Trade-mark"—what those words were put on for.

Objected to as incompetent and irrelevant.

A. "B. I. T." is Brown's Iron Tonic. That is a trade-mark we had registered.

55 Q. State what "Does not blacken the teeth" refers to.

A. "Does not blacken the teeth" we added to the trade-mark. That is the way we put it in our first advertisement. We used it as a special distinction of our preparation.

56 Q. State what you notice on this preparation as to *their* being any period after the letter I.

A. There is a period after the letter I.

57 Q. Where?
A. There (indicating).
58 Q. You say you took out a trade-mark?
A. Yes; we had a trade-mark registered.
59 Q. State what that is.
A. This is the trade-mark. The fourth of May, 1883, we had a trade-mark.
60 Q. Are you willing to have that attached to your deposition?
A. Yes, sir.

(Paper offered in evidence and marked Exhibit 7.)

61 Q. What colored wrapper were you using then?
A. We were using the first one—the first wrapper—that is, the original. "Does not blacken the teeth" and "B. I. T." was our trade-mark, and we used them in all the wrappers, I think.
62 Q. When did you say Mr. Brown went out of the firm?
A. December 10, 1883, he sold his interest to me.
63 Q. What did that include? What did he sell to you?
A. He sold his interest in the store and his interest in Brown's Iron Tonic.
64 Q. Who has been interested in the firm and what has
104 been the style of the firm since then?

Objected to as irrelevant.

A. No one is interested with me since then; have had no person since then.
65 Q. What is the style of the firm since then?
A. C. J. Lincoln.
66 Q. State what this package is, marked Exhibit D, filed October 4, 1886; A. P. Selby, clerk.
A. That is Brown's Iron Bitters.
67 Q. Who is that manufactured by?
A. The Brown Chemical Company of Baltimore.
68 Q. State what knowledge you had, if any, at the time you and Mr. Brown got up your preparation of Brown's Iron Tonic—what you knew about the Brown Chemical Company preparation.
A. We had very little, if any. I do not know that I had seen it.
69 Q. State what knowledge you had of its being advertised in the Southwest at that time.
A. I do not remember that it was advertised. It may have been, but I do not know that it was.
70 Q. State what you know about its being advertised since, to what extent your knowledge goes of its being advertised, and when it began to be so advertised.
A. Well, it had been advertised thoroughly since—many times largely advertised in the papers and circulars and other ways.
71 Q. State when you first observed this course of advertising—this general course of advertising you have spoken about—when that began, to the best of your recollection, by the Brown Chemical Company.

A. The first I remember of it was the advertising during the fair of 1882, I think.

72 Q. When was the fair?

A. October, I think. The first advertising I remember of noticing they posted—I think in 1882—the fair grounds very thoroughly. I do not remember the style of posting, but I think
105 it was pretty liberally posted. I know we commenced having a rapid sale for it.

73 Q. A rapid sale for Brown's Iron Bitters?

A. Yes, sir.

74 Q. When you say the fair what fair do you mean, and where?

A. It was a State fair, a mile or two from town. I noticed it there.

75 Q. A mile or two from where?

A. Out of town—Little Rock—about a mile out of town.

76 Q. At the time that you and Mr. Brown or Mr. Brown first got up your preparation and fixed the character of the wrapper and the details of it what knowledge did you have of the wrapper and details of Brown's Iron Bitters?

Objected to as incompetent and irrelevant.

A. I didn't have any.

77 Q. State whether or not you have ever handled Brown's Iron Bitters.

A. Yes, sir; we have handled it all the time since it became introduced there, and are handling it now.

78 Q. Of whom did you buy your preparation?

A. I bought it of the Brown Chemical Company.

79 Q. When did you first begin to handle it?

A. I have a memorandum. The first I bought from the Brown Chemical Company was April 22, 1882. I cannot give the quantities.

80 Q. State how much you bought and sold of Brown's Iron Bitters since in your drug store at Little Rock.

Objected to as incompetent, immaterial, and irrelevant.

A. I bought 19 gross from the Brown Chemical Company since April 22nd, 1882, to March 9th, 1886, and have not bought any from them since. I have bought some, but not from them.

81 Q. State how much you sold during the year 1886 of Brown's Iron Bitters.

Objected to as irrelevant.

A. I think I sold about six gross. I bought five from them and about one gross from other parties.

106 82 Q. In what way have you sold it and how?

Objected to as irrelevant.

A. We sell it just like we do other goods. We sell a great many patent medicines. If anybody wants any patent medicine we try to keep it and sell it; that is what we are there for—to sell goods.

83 Q. State whether you put out any circulars or price-lists.

Objected to as irrelevant and leading.

A. Yes, sir; we put out monthly price-lists and we put out sheets similar to that (indicating).

84 Q. State what date that is.

A. June 12, 1883.

85 Q. State what it is you have in your hand.

A. What we call monthly price-list, that we send to the trade.

86 Q. What do you do with it?

A. We send it to our customers—drug and general trade that we try to sell goods to.

All evidence as to price-lists objected to as irrelevant.

87 Q. State how often you publish such lists.

Objected to the same as before.

A. Monthly.

88 Q. How long have you been doing that?

Same objection as before.

A. Since 1881—since early in 1881.

89 Q. Up to what time?

Objected to as irrelevant.

A. Well, we published them off and on always, but more regular since 1881. This colored price-list has hardly been changed since we commenced publishing a similar size and color. I don't think but one or two changes in it since 1881, and we are publishing it now monthly.

90 Q. State whether or not you are will- the price-list shall be attached to your deposition as a part of the same.

Objected to as irrelevant.

107 A. Yes, sir.

(Paper referred to offered in evidence and marked Exhibit 8.)

91 Q. Point out, if you will, in this exhibit any reference to either your medicine or preparations or the Brown Chemical Company's.

Objected to as irrelevant and calling for secondary evidence.

A. We quote both here. We quote Brown's Iron Bitters and we quote Brown's Iron Tonic.

92 Q. Read the reference to Brown's Iron Bitters.

A. "Bitters, Iron, Brown, $8.00 a dozen." Tonic, Brown, Iron, $6.00 a dozen."

Answer objected to.

93 Q. State whether or not this reference to your own preparation and Brown's Iron Bitters has been made in all the circulars you have published.

A. I think they have. We quote the prominent patent medicines—everybody's—when we send out a list.

Answer objected to as irrelevant.

94 Q. State whether or not you ever had any correspondence with the Brown Chemical Company.

A. Yes, sir; we have at different times. We bought goods from them and had some correspondence about other matters.

95 Q. Referring to August, 1882, did you have any correspondence with them in that year?

A. I forget the dates; yes, sir.

96 Q. Turn to your letter book, if you have it with you, and see.

A. August 18 there is a letter and August 24th.

97 Q. What is that you have in your hand?

A. This is our letter book; letters for 1882.

98 Q. What is your custom in regard to letters that you send away and correspondence?

A. We keep them in this book.

108 99 Q. What do you find on pages 69 and 70 of your letter book?

A. I find a copy of the letter to the Brown Chemical Company, dated August 24.

100 Q. What did you do with the original of that letter?

A. Sent it to the Brown Chemical Company.

101 Q. How?

A. By mail.

102 Q. State what this is you have in your hand.

A. A copy of the letter; rather badly copied in some places. I told the young man to make a copy of it so that I could read it better.

Counsel for the complainant objected to both the copy and the original as secondary evidence. No objection is made to this being a copy instead of the original copy, but I object to both as secondary evidence.

Mr. McKeighan: We give notice to the complainant to have the originals of the same produced and filed instead of the copy which is to be attached.

103 Q. State what this is you hold in your hand.

A. This is a copy of the letter to the Brown Chemical Company, dated August 24, 1882.

104 Q. Are you willing that this should be attached to your deposition and made part of the same?

A. Yes, sir.

(Paper referred to offered in evidence and marked Exhibit 9.)

Counsel for the complainant here produces the original of said letter of August 24, 1882; whereupon it is agreed that a copy of the letter of August 24, attached to the deposition, shall stand as the original and no further objection be made to it on the ground that it is secondary evidence.

105 Q. State what you did, if anything, in reference to sending to the Brown Chemical Company of Baltimore, Maryland, a package containing your bottle, wrapper, and carton.

A. We sent them one.

109 106 Q. At the time of the date of this letter, August 24?

A. Yes; I think so.

107 Q. What reply, if any, did you receive to that letter? Did you receive a reply?

A. Yes, sir.

108 Q. State what this is you have in your hand.

A. This is a reply to the letter of August 24.

109 Q. From whom?

A. From the Brown Chemical Company.

110 Q. Are you willing that should be attached to your deposition as a part of the same?

A. Yes, sir.

(Paper referred to offered in evidence and marked Exhibit 10.)

111 Q. Now, have you since that time received any letters from them upon the subject of your Iron Tonic?

Objected to as incompetent, irrelevant, and leading.

A. Yes; we have.

112 Q. State what that is you have in your hand.

A. This is a letter from the Brown Chemical Company, dated Baltimore, November 21st, 1882.

113 Q. State whether or not you are willing to have that attached to your deposition as a part of the same.

A. Yes; this is the original letter.

(Paper offered in evidence and marked Exhibit 11.)

114 Q. State whether or not you made any reply to that letter.

A. Yes, sir; I made a reply; sent it November 24, 1882.

115 Q. What is that you hold in your hand?

A. That is a copy of the letter I wrote.

116 Q. What did you do with the original of the letter of which that is a copy?

A. Mailed it to the Brown Chemical Company of Baltimore.

117 Q. Did you pay the postage?

A. Yes, sir.

118 Q. Did you receive any reply to your letter of November 24?

A. No, sir.

Copy objected to as secondary evidence and all evidence con-

110 nected with it.

Mr. McKeighan: Notice is hereby given to the complainant's counsel to produce and file the original of said letter instead of the copy.

119 Q. When did you next, if ever, receive a letter from the Brown Chemical Company with reference to your preparation of Brown's Iron Tonic?

Objected to as irrelevant.

A. I don't know what date we received it. It is dated April 12, 1886. It was answered on the 16th of April.

120 Q. Is this the letter which you received from the Brown Chemical Company which you hold in your hand?

A. Yes, sir.

121 Q. Are you willing it should be attached to your deposition as a part of the same?

Objected to as irrelevant.

A. Yes, sir.

(Paper offered in evidence and marked Exhibit 12.)

122 Q. What is that you hold in your hand?

A. This is a circular that they mailed giving me notice of suits being brought.

123 Q. That was enclosed with the letter April 12, was it?

A. Yes.

124 Q. Are you willing that should be attached to your deposition as a part of it?

A. Yes, sir.

(Paper offered in evidence and marked Exhibit 13.)

Letter and circular objected to by the complainant's counsel.

125 Q. Did you or not make any reply to that letter?

A. I made a reply.

126 Q. How?

A. By letter.

127 Q. What did you do with the letter—the original?

A. I mailed it to the Brown Chemical Company with a circular of mine.

111 128 Q. Brown Chemical Company where?

A. Baltimore, Maryland.

129 Q. What about the postage?

A. Paid the postage.

130 Q. What is that you have in your hand?

A. That is a copy of the reply.

131 Q. What did you do with the original? Did you make any copy of it at the time?

A. This is a copy I made at the time.

132 Q. On what book?

A. I didn't make a copy on the book, but it is a copy I made of it without copying it in the letter book.

133 Q. You made this copy at the time from the letter?

A. Yes, sir.

134 Q. Are you willing this should be attached as a copy to your deposition?

Objected to as incompetent, irrelevant, and secondary evidence.

A. Yes, sir.

(Paper offered in evidence and marked Exhibit 14.)

Mr. McKeighan: Notice is hereby given to the complainant to produce and file the original in place of said copy.

135 Q. What is this that you hold in your hand?

A. That is a circular we mailed to the trade, a copy of which I sent to the Brown Chemical Company with that letter.

136 Q. Are you willing that should be attached to your deposition as a part of it?

A. Yes, sir.

(Paper referred to offered in evidence and marked Exhibit 15.)

Circular objected to on the ground that it is incompetent, irrelevant, and immaterial.

137 Q. What other correspondence than that you have referred to has taken place between you and the Brown Chemical Company with reference to their bitters or your tonic?

A. I don't remember any other.

112 138 Q. Do you know W. T. Powell, of the Brown Chemical Company?

A. I do not.

139 Q. You never, then, had any personal interview on the subject?

A. No, sir; never saw him that I know of.

140 Q. Do you remember Mr. Robert T. Jackson, who has been heretofore in the employ of the Brown Chemical Company?

A. No, sir.

141 Q. Did you ever have a talk with him of any kind?

A. I don't think I ever did. I do not know him. If I did I don't know him.

142 Q. Did anybody representing themselves as in the employ or interest of the Brown Chemical Company ever approach you personally to have a talk with you?

Objected to as immaterial and irrelevant.

A. No, sir.

143 Q. At the date of your letter of August 24th, 1882, what colored wrapper was you using?

Objected to as incompetent, immaterial, and irrelevant.

A. We were using the first wrapper. We got the other out in 1883; very soon as that, I think.

144 Q. That is the white wrapper, is it?

A. Yes, sir.

145 Q. What wrapper was around the bottle of your preparation which you sent to the Brown Chemical Company and referred to in your letter of August 24th, 1882?

A. The white, I think. I don't think we had the other then.

146 Q. What knowledge, if any, have you, Mr. Lincoln, of any confusion between Brown's Iron Tonic and Brown's Iron Bitters?

Objected to as incompetent.

A. I have none. I have never seen any confusion.

147 Q. What knowledge have you, if any, as to the purchasers at retail calling for Brown's Iron Tonic and meaning Brown's Iron Bitters?

113 Objected to as leading and incompetent.

A. None. I never saw any one do it.

148 Q. State what knowledge you have of Brown's Iron Bitters being called by any other name than Brown's Iron Bitters.

Objected to as irrelevant and incompetent.

A. I do not know of any other name for it. I never heard any other name for it.

149 Q. State whether or not you ever heard Brown's Iron Bitters called Brown's Iron Tonic.

A. I never did.

150 Q. State what other name your medicine ever goes by than Brown's Iron Tonic.

A. It doesn't go by any other name; never had any other.

151 Q. State whether or not you ever heard it called Brown's Iron Bitters.

A. I never did.

152 Q. State what your practice has always been in your business when parties, either at wholesale or retail, called for Brown's Iron Bitters.

A. To sell it to them always. We always sell it to them if they call for it.

153 Q. State what instructions, if any, you have given your employés, if you have any employés, in reference to that subject of selling Brown's Iron Bitters.

A. I do not know that I ever gave them any special instructions about it. We have two travellers and 12 to 14 men in the store, and I don't know that I ever gave them any instructions about selling the bitters. We sell it all the time, and have always sold it ever since it was known down there, and we sell it whenever any one calls for it, just as we sell any other goods.

154 Q. State what knowledge you have of any of your employés ever selling your medicine, Brown's Iron Tonic, for Brown's Iron Bitters.

A. I never heard of an instance of any one doing it.

155 Q. What knowledge have you of the use of iron in
114 medicinal preparations since you have been in the trade and its uses?

Objected to as irrelevant.

A. Iron has been used very extensively ever since I have been in the business; always used in medicines; a great many preparations; one of the longest lists of anything we have.

156 Q. What is the general effect, if any, claimed for iron on the human system?

Objected to as incompetent and irrelevant.

A. Iron is used as a tonic in almost every instance, and different combinations, of course, for different purposes. The main use, though, is as a tonic. It increases the blood and strengthens it.

157 Q. Who got up, if you know, the formula for Brown's Iron Tonic?

A. M. B. Shelley, I think. He was our manufacturer at the time.

158 Q. If there is any general difference between medicines called bitters and those called tonics state what it is.

Objected to as irrelevant.

A. Well, tonics tone up the system, and can be used in bitters, pills, any shape whatever, while bitters are naturally supposed to be a liquid more or less stimulating. Most all bitters are simply stimulating, and you would naturally suppose from the word "bitters" it was a stimulating drink, but a tonic is not necessarily a stimulating preparation at all. It may be or may not be. It may be a tonic and stimulating both, and it may be only just a tonic proper, and wouldn't include anything like a stimulant.

159 Q. What have you to say in reference to your preparation blackening the teeth?

Objected to as immaterial.

A. We claim it does not blacken the teeth. In fact we know it does not, and we can prove that it never has, but many iron preparations do, and we use that as a trade-mark, and we used it before any other manufacturer of an iron preparation did use it.

115 160 Q. State what knowledge you have of the Brown's Chemical Company advertising their remedy as not blackening the teeth.

Objected to as calling for irrelevant testimony.

A. I never saw any of their advertisements until since the medicine became somewhat popular in the country as being advertised as a tonic and not to blacken the teeth; but of late they advertise it for everything there is and include all.

161 Q. State what difference there is between your liquid preparation and the Brown Chemical Company's in reference to taste, if there is any.

Objected to as irrelevant and immaterial.

A. Well, I have not tasted that. I would like to do it, and I can tell more about it. The last I saw of it was in a colored bottle, and I couldn't tell what color it was until it was poured out.

162 Q. I ask about the taste, not the color.

(Witness here opens a bottle of Brown's Iron Bitters and tastes the the same, and says:)

A. It don't taste like ours. It is very much the same color as ours.

Evidence as to taste and color objected to as conclusions of the witness and incompetent and irrelevant.

163 Q. Have you before you the two bottles, a bottle each of Brown's Iron Bitters and Brown's Iron Tonic?

A. Yes, sir.

164 Q. Have you tasted of each?

A. Yes, sir.

165 Q. What is the result as to the taste of the two articles?

Objected to as irrelevant and immaterial and calling for the conclusions of the witness.

A. They are more alike than what I thought they were. I don't think I ever tasted them before in my life. The Brown
116 Chemical Company's preparation has got more aromatics in it than this has.

166 Q. How do you know that?

A. I can tell from the taste of the spices. It has got some kind of spice in it; I don't know what it is, though.

167 Q. What colored bottle have you always used in putting up your preparation?

A. We have used the same kind—a green bottle—nearly always white.

168 Q. White is the one you have in your hand?

A. Yes.

169 Q. What kind of a bottle has the complainant used?

A. That is an amber bottle; three-side panel. He has no regular trade name. It is a special bottle.

All evidence as to colors and bottles objected to, as the exhibits are the best evidence.

170 Q. Are you willing that the bottle you have had in your hand, which you have referred to, shall be attached to your deposition as a part of the same?

A. Yes, sir.

Bottles referred to are offered in evidence and marked Exhibits 16 and 17.

171 Q. State what difference there has been, if ever, since you commenced to put up your preparation as to the size of your bottles, the size of the wrappers and carton, constituting the whole package.

A. We have not made any change in our bottles; they are the same size now as when we commenced.

172 Q. Has the Brown Chemical Company ever brought a suit against you?

Objected to as irrelevant.

A. No, sir.

173 Q. What are the prominent drug stores in Little Rock and who are they owned by?

A. There is myself and W. L. De Woodey, W. H. Halliburton,

C. H. Sale, J. J. Wilkes, J. B. Bond, J. M. Colburn & Co., J. A. Jenkins, E. P. Thomas, J. E. Gibson, A. A. Weny, O. O. Badger.

117 Objected to as immaterial and irrelevant.

174 Q. Who among those do the largest business?

Objected to as irrelevant.

A. We do the largest business.

175 Q. And the next?

Objected to as before.

A. I expect Halliburton.

176 Q. Who next?

Same objection as before.

A. Mr. J. W. Beidenman. I forgot him in giving the list; and then they run right along about in the proportion as I have called them.

177 Q. Mr. Lincoln, looking at exhibit marked Exhibit 2, W. F. Powell and Robert T. Jackson's depositions taken in this case, marked Complainant's Tacking Card, J. A. S., Ex., November 8th, 1886, and exhibit marked "Lincoln Poster, J. A. S., Ex., November 8th, 1886," state whether you ever saw such poster before, and where.

A. Yes; I have seen it.

178 Q. Where?

A. I have seen that in Little Rock.

179 Q. Is the first one referred to, marked "Complainant's Tacking Card"—where did you see that?

A. I saw it posted in Little Rock.

180 Q. About when did you first see it posted?

A. I think in June last.

181 Q. And when did you first see the one marked "Lincoln's Poster?"

A. I think in the latter part of June or July.

182 Q. Now state all the facts connected with the getting out of your poster.

A. Well, I directed them to get out a poster.

183 Q. Who?

A. Mr. C. H. Romyn, the bill-poster.

184 Q. What direction did you give?

A. To get out a prominent poster to post the town for me, and he had instructions to get it out some time prior to this.

118 All evidence as to the directions given or getting out the poster objected to as incompetent and irrelevant.

A. He came to me in the latter part of June or July, I don't remember which, and he said he wanted to post the town for me and would get me up a poster, and I wrote what to put on it and sent my young man with him to the office to see if they could get it done.

They got some that was on paper too thick to paste and too thin to tack, and we sent it back and they got some on board, and this is one of those paper ones, that was too thick to paste and too thin to tack, and they went back and got some other, and I told them to get a size so as to lay in my box; that was all the direction I gave—was in regard to the size.

185 Q. What direction did you give as to color?

A. Did not give them any as to color.

Question and answer objected to as incompetent and irrelevant.

186 Q. State what else occurred.

A. After the poster had been up some time or after this evidence came up I heard about this poster and noticed it was so similar to Brown's Iron Bitters poster that I withdrew all of them and ordered them to cease putting them in the boxes. We hadn't been packing any up only about a month in Little Rock and some in Pine Bluff and one or two other places, and I saw they were so much alike I stopped using them.

187 Q. When did you stop using them?

A. About the first of January, 1887.

188 Q. To what extent had you used them before?

A. Oh, I had posted at Little Rock and at Fort Smith and Van Buren and Pine Bluff; those are the only places, I think; and we put some in the boxes.

189 Q. What do you mean by putting in boxes?

A. Well, we would put up a dozen in a box and put two or three posters in the top, so that parties could post them up to show
119 what we had to sell.

190 Q. What do you say led you to look or to see this similarity?

A. The evidence of Mr. Romyn being taken in New York or sent to New York to testify in regard to them was the first idea I ever had that the similarity had any bearing whatever.

191 Q. Then what did you do?

A. I withdrew all I could and stopped and ceased to use them.

192 Q. In any way?

A. Yes, sir.

193 Q. What is your purpose in regard to them in the future?

Objected to as irrelevant.

A. I don't propose to use them because they look so much like his posters. I don't care to use anything of the kind. I had no idea of using anything of the kind when I commenced to use the poster, and if there had been any other colored paper there in all probability I wouldn't have used them. I did not think it had any bearing on it at all.

The part of the answer as to the opinion of the witness as to the resemblance of posters objected to as incompetent.

WITNESS: I merely wanted to explain the facts in the case; that is all.

194 Q. Now, what color, if any, predominates in posters, and why?

Objected to as incompetent and irrelevant.

A. Nearly all posters are yellow, because it stands better.

195 Q. Stands what better?

A. The rain and the sun and don't change as much as other colors. A great many colors fade out and fade one into the other and will not look distinct.

196 Q. How is it with yellow?

A. Yellow will stand better than anything else; it is the
120 most used and it is cheaper and I think that is one reason; that is the reason we got it, because it was cheaper. I told him to get the cheapest paper he could.

All evidence as to the directions as to what sort of paper to get objected to as incompetent and irrelevant.

197 Q. When did you first contemplate using the poster you did?

A. My travelling man had been writing me to get up a poster and I neglected it. I had been intending to get up a poster for a good while, and I had spoken to this bill-poster about posting the town.

198 Q. How long before that before you actually did?

A. I think 3 or 4 or 6 months. I can't tell. It would be better to have his evidence in regard to that. Nearly all the circulars and things that we put out have been on the yellow paper, because—I don't know why, hardly, myself; only just happened to be.

All evidence as to the witness' statements as to the color of the circulars put out objected to as irrelevant.

199 Q. What, if anything, did you ever tell C. M. Romyn about your intention of using some other poster or packing card, like that used by the complainant?

Objected to as irrelevant.

A. I never told him anything about using anybody's.

200 Q. What, if anything, had you said to him at the time he was posting your cards in Little Rock, about having him post these packing cards or posters in their place?

Objected to as leading and irrelevant.

A. I told him I would post Fort Smith and Pine Bluff as soon as he had to go there. He had to go there to post some fairs, and I told him that I would have him put up posters for us at those points when he went there, which he did. He went there on other business. Of course it would be rather expensive to send a poster to post a little town, but he told me he was going to that
121 place, and I told him when he went there I would get him to post the town for me. There was never anything said about using anybody's posters but our own, and we never attempted to imitate anybody's posters.

All the foregoing objected to.

201 Q. State whether or not you had ever used a poster befor this one?

Objected to as immaterial and irrelevant.

A. I think we have used some. I don't remember. We used a great many ways of advertising—by cards and little circulars, mailing them, etc.

202 Q. State whether or not you had ever packed any up like this—packed up cards of this kind.

Objected to as leading and as calling for irrelevant evidence.

A. I can't say definitely that we posted up any particular Iron Tonic card.

203 Q. In June or July, 1886, or at any other time, state whether or not Mr. Robert T. Jackson visited you about your card.

Objected to as irrelevant.

A. No, sir. He never visited me.

204 Q. He never visited you about anything?

A. No, sir.

205 Q. What intention, if any, did you have, and have you ever had in the preparation or sale of your medicine to create a confusion between your preparation and the Brown Chemical Company's, in order to deceive the public or injure the Brown Chemical Campany?

Objected to as incompetent.

A. We had no intention of confusing or injuring anybody. We made this as a distinct preparation to put on the market,
122 and we didn't make it in imitation or in regard to anybody's preparation.

Cross-examination by Mr. REX, counsel for the complainant:

206 X Q. I believe you have said that you commenced making your Iron Tonic—Brown's Iron Tonic—after October, 1881?

A. I think it was October; yes.

207 X Q. When did you first advertise it in the newspaper?

A. I don't know exactly; I don't think we advertised it in the paper until 1882.

208 X Q. What time in 1882?

A. I can't tell you exactly; I have not seen the paper I sent to the Democrat. August, 1882, is the first advertisement that they had a record of. The Gazette didn't have any record when they commenced. Those are the principal papers in our own town, although there are other papers there.

209 X Q. August, 1882?

A. Yes, sir.

210 X Q. Did you have any newspaper advertisements inserted before that time?

A. Not that I remember of; but I would not possibly remember, for Brown attended to all that part of the business at that time.

211 X Q. You never advertised your medicine of any consequence, you say, until 1883?

A. We advertised considerably in 1882, but not as much as later; we increased as we went along. We advertised more in 1885 and '6 than I ever did before.

212 X Q. Your sales, I presume, became much larger. What did your sales amount to in 1882?

A. About 15 gross in 1882; they were about 15 gross; in 1883 they were 45. Do you want all right through?

213 X Q. That is sufficient in those two years. What were they in 1881?

A. We didn't sell but very little in 1881. I didn't make a memorandum of that, only one sale I found on my book in 1881.

214 X Q. You only made one sale in 1881?

123 A. No, sir; I didn't say that. In looking over the book—I kept no account of those things, and had no idea of ever looking it up; but when I went and looked it up I found only one sale in 1881 on the book. How much we sold in the city I don't know. I sold some, but I don't know what amount. I didn't keep a record of the sales made in the city.

215 X Q. What did the sale amount to in 1881?

A. I have forgotten. There is one item of Brown's Iron Tonic sold in a bill in 1881.

216 X Q. Did you always enclose your Brown's Iron Tonic in a wrapper when you first commenced to sell?

A. I think we did. There may have been some wrapped up—a few bottles—but not long, I think.

217 X Q. This is the first wrapper you used, Exhibit 4?

A. That is the first we ever put up; that is the first wrapper I ever remember using. If any other wrapper was used it was only temporary.

218 X Q. These wrappers are marked Exhibits 6, 4, and 5. You have read Mr. Brown's deposition, have you not?

A. I heard the Judge read a portion; I don't know whether all or not.

219 X Q. He said in his deposition the period after "I" was omitted in the wrappers which were printed in Louisville, Kentucky?

A. I think Mr. Brown is mistaken. There is the wrapper.

220 X Q. Your wrappers were printed in Louisville, Kentucky?

A. Yes; Exhibit 5. I will say what I think Mr. Brown means in regard to that: I think he means he wanted the period put up there like he had in the old one, and the photograph man said it should be at the bottom of the letter, where he put it, but he says he thinks it is left off, and I think he is mistaken.

221 X Q. Isn't it left off on the side of Exhibit 6?

A. I don't know but it is. I didn't notice that before. I do not see any period there. I thought he had reference to that (in-

124 dicating). He may have had reference to that. I never

noticed that was left off, but I believe it is. I guess that is what he had reference to about the period being left off.

222 X Q. You say you never noticed that before?

A. No, sir; I had not. I remember they called attention to that in the front and put it in the bottom of the letter.

223 X Q. Let me show you an advertisement marked "Lincoln's Advertisement."

A. Yes, sir; that is a cut I had made in St. Louis—a wood cut.

224 X Q. You have been inserting that very extensively in the newspapers, haven't you, in advertising your bitters?

A. Yes, sir; we advertised with that for about a year, I think, considerably, in a good many newspapers. I don't know how many wood cuts there are; some a little longer than that.

225 X Q. When did you first get it up?

A. I do not remember that. It must have been gotten up in 1884 some time.

226 X Q. You will notice in this trade-mark, in your letters, this arrangement B. I. T., there is no period except after the T.; that is simply an abbreviation of bitters, isn't it?

A. No, sir; it is the initials of "Brown Iron Tonic."

227 X Q. How do you explain that the period is only used after the last letter, so as to make it as an abbreviation of bitters?

A. I don't know. I don't know why it was left off. I never noticed it before that they were. I sent the wrapper to St. Louis to make a cut. I think it was made by Wittenburg and somebody here who make wood cuts. That is the way he got it up, but I never noticed that it was punctuated as there. That was got up after Brown went out.

(Paper last referred to offered in evidence by complainant's counsel and marked Exhibit 18.)

228 X Q. The Brown Chemical Company's Bitters were sold in Arkansas early in the spring of 1881, were they not?

125 A. I never saw any of Brown's Iron Bitters until I bought some, that I know of. April 22, I think, is the first we ever bought of them.

229 X Q. How did you come to buy them?

A. There was a demand for them there, I suppose, or I wouldn't have bought them. I had some before that, I think, that I bought outside; probably a dozen or two.

230 X Q. When did you buy them?

A. I can't tell you exactly.

231 X Q. When do you say you got them?

A. The first I bought from the Brown Chemical Company was April 22, 1882.

Mr. McKeighan: Refer to your book and give exactly the date.

Mr. Rex: Never mind about the memorandum. What I wish to get at is this——

Mr. McKeighan: I would like to have him answer it so as to obviate my going into it.

A. The first Iron Bitters that was ever in our store, that I could

find on our books, the invoice is dated November 2nd, 1881; that is the first that ever came there.

232 X Q. That is the first you bought, as far as you know at present?

A. I went to my books and invoice book to ascertain the dates.

233 X Q. You say you bought them because there was a demand for them?

A. I presume so; yes, sir; that is what we buy goods for.

234 X Q. I suppose you bought them November 1st, 1882, because there was a demand?

A. Yes, sir; we wouldn't have bought a dozen only if there had been much demand for them.

235 X Q. Then you heard of them before November 1st, 1881?

A. Possibly so; I don't remember.

236 X Q. You are sure you did not hear of them as early as August 1881?

A. I don't think I did.

237 X Q. Are you sure—are you certain about it?

126 A. I have no recollection of knowing anything about them until we got them and ordered them; nearly all new goods that there is a demand for we buy in small quantities at first—buy them as there is a demand for them.

238 X Q. Now, can you tell me when the first sale of your bitters was made?

A. We don't make bitters; we make iron tonic. Is that what you have reference to?

239 X Q. Your Brown's Iron Tonic, I mean.

A. The first account I have on my book that I find is December 29th, 1881.

240 X Q. You signed your application for your trade-mark with Mr. Brown?

A. I think so.

241 X Q. Are the statements made at that time true?

A. Yes, sir.

242 X Q. You know what those statements are, I suppose?

A. I think so.

243 X Q. I believe you stated you had been in the drug business 35 years?

A. About that time.

244 X Q. And had been in the wholesale and retail drug business since the year 1868?

A. Yes, sir.

245 X Q. I suppose you are pretty well known in the drug business in your country—Arkansas?

A. Yes, sir.

246 X Q. I suppose you are better known than Mr. Brown, are you not?

A. I do not know that I am better known than Brown. He travelled. I think I am probably better known in Little Rock.

247 X Q. Who is the head of the firm of Lincoln & Co.?

A. I was.

248 X Q. I suppose you looked after the management of the business?

A. I looked after the financial part.

249 X Q. I suppose nothing was done in the business without your consent?

A. No, sir; I was consulted in nearly everything.

250 X Q. Mr. Brown states in his deposition that his name
127 was used in connection with this tonic of yours because he was well known. Why was it that you didn't use both of your names in connection with it and thereby get the advantage of both your reputations?

A. Well, proprietors always use the shortest name. They use Brown, Smith, Jones—the shortest name in preference to any other.

251 X Q. Lincoln is a good name and you are the head of the firm; why didn't you put it in your own name?

A. Because he started to put up patent medicines under his name and he proposed to increase them, and he would have made a long list of them, but I bought him out.

252 X Q. What patent medicines were started in his name?

A. Brown's Iron Tonic and Hair Dye and Ginger. Well, I kept the ginger in my own name—the firm name. As to the ginger, we never made it specially in Brown's name; but he put up carbolic salve and horse and cattle remedies.

253 X Q. What do you mean by saying he put them up?

A. He brought a man with him from Louisville to act as compounder or chemist, as he calls him—M. B. Shelley—and he did the manufacturing through Brown's instructions.

254 X Q. But he was in your employ as much as Brown's?

A. Yes, but more particularly under his control, because he looked after that department and I looked after the drugs. He talked about making these preparations before we went into the business, and had his heart set on making them and a half a dozen others, and would have made them, only I was afraid it wouldn't pay, and I have always opposed patent medicines as requiring too much money and because I had my hands full of too much other business. The patent business is good by itself, I presume, and he insisted on putting his name on it, too.

255 X Q. You consulted together about it?

A. Yes, sir.

256 X Q. Why did he think it was important to have his
128 name on it?

A. He wanted his name on everything that he done, and he wanted his name in the firm, and I took him into the firm before I bought him out, because he said he wasn't prominent enough in the business, and we changed the name to Lincoln & Brown.

257 X Q. What was the object?

A. I am telling you why. He insisted on his name being in the firm, and we put it in there.

258 X Q. That has nothing to do with the matter.

A. Well, he insisted on having his name in it, and I told him all

right, and he had his name on special little preparations we had made.

259 X Q. What other preparations have you got with his name on at present?

A. Not any; we are not making anything in that line now with his name, except Brown's Iron Tonic.

260 X Q. Most bitters are tonics, are they not?

A. Yes, I presume so.

261 X Q. That is their object, as a general rule?

A. They may be a tonic in some particulars.

262 X Q. That is what they are used for, as a general rule, are they not?

A. Stimulants or not.

263 X Q. If a man says he wants a tonic a person would be likely to recommend some sort of bitters, wouldn't he?

A. Well, I don't know; some are made to drink, and some are good tonics.

264 X Q. Isn't it a fact that when people speak of bitters they include a tonic in the term—that bitters are a tonic?

A. Some bitters are—yes.

265 X Int. On the 20th of April, 1886, you issued a circular, did you not, in which you used the following language: "Mr. Powell claims to have been selling Brown's Iron Bitters for the past 5 years. I have only to say I have been selling Brown's Iron Tonic for a greater length of time"?

Mr. McKeighan: What circular?

Mr. Rex: 1886.

Mr. McKeighan: I object unless the circular is produced and shown to the witness.

129

A. I don't remember it; I don't remember the circular.

266 X Q. Do you remember making such a statement?

A. No, sir; I didn't make that statement. It is made over my signature, though. Jones, my travelling man, wrote this.

Mr. Rex: I object to that. I don't care who wrote it.

267 X Q. That is dated April 20th, 1886. That statement is false, is it?

A. No, sir; we have been selling over five years, because we sold it in 1881. That statement must be correct; it would not be five years until December, 1881. That statement I never noticed, and I did'nt read that circular. I never noticed that language. That statement was made by him, and was made at random.

269 X Q. Well, "The sale of this medicine has gradually increased for 5½ years, and during the past 12 months the sale of it has been marvelous;" that statement is in your circular, is not it?

A. I think so.

270 X Q. Examine and see. Isn't that another error?

A. That it was marvelous?

271 X Q. Not that—"It has been used 5½ years."

A. Oh, I expect that it is.

272 X Q. Don't you know it is?

A. Yes; I don't think it has been used 5½ years. I failed to look over the circular carefully. It don't do to let the boys write too many things that go out.

273 X Q. This circular was issued over your name, C. J. Lincoln?

A. Yes, sir.

274 X Q. April 20th, 1886, Little Rock, Arkansas, headed "Office of C. J. Lincoln, wholesale druggist"?

A. Yes, sir.

(Paper referred to is offered in evidence by complainant's counsel and marked Exhibit 19.)

130 275 X Q. In this letter of August 24, 1882, marked Exhibit 9, you say: "In reply to your inquiry in regard to Brown's Iron Tonic, will say we commenced to manufacture it since the admission of Mr. E. L. Brown in our firm, in May, 1881, together with Brown's Hair Dye and other preparations under his name." This was before you commenced your vigorous system of advertising and before your goods were much, if any, sold here. How do you reconcile that with your statement to one of Mr. McKeighan's inquiries, that this tonic of yours was not made until after October, 1881?

A. Well, I don't know exactly the date it was made. Brown commenced making it after he came home. I think he came home in September or October, and I think October is about the time he commenced to make it, as near as I can recollect. Brown states that he sold many before that, but I looked over all the books and couldn't find any on the book except December 29, and that is the reason I made the statement. I didn't expect when we were making the preparation—I didn't know whether it would be a popular preparation or not, and didn't make a memorandum, and I only had two old books that were filed away to look over and find out about it and refresh my memory.

276 X Q. In a letter to you, marked Exhibit 12 to your deposition, the firm of the Brown Chemical Company refer to one of your circulars as follows: "One of your customers has sent us your circulars, in which you quote: 'We are selling Brown's Iron Bitters at $91.20 by full gross lots, but Brown's Iron Tonic, at $6.00 per dozen, pays the trade a much better profit and is a superior remedy,'" etc. Is that statement correct?

A. I think it is.

277 X Q. That circular was issued in the fall of 1882, wasn't it?

A. I don't remember now. The letters call attention to it there. Brown wrote those letters or replied to those letters and issued
131 all the circulars while he was with me. "I think the preparation is a superior preparation and pays a better profit." I think his statements were true, but they were not in altogether good taste, may be. I see he apologizes for it in his letter in regard to it; that it was bad taste to have made such a remark, although I think that it is a fact that the preparation is superior and pays the trade a better profit.

278 X Q. Another thing in this circular, Exhibit 19, you say that

your "Brown's Iron Tonic is a genuine article; its discovery the result of long and patient thought and labor." What do you mean by "the result of long and patient thought and labor"?

A. Brown said he had been working at it about 10 years. I don't know how much labor he has put on it.

279 X Q. Don't you know that in the deposition of Mr. Brown that Mr. Brown says he got the thing up after September, 1881?

A. Yes, sir; but that is no sign he didn't spend thought and labor. I might get up a preparation that I spent 25 years on between now and to-morrow night, but that wouldn't be because I had not given it thought and had it fixed thoroughly in my mind, and had to go to work and put the thing together in good shape.

280 X Q. Didn't he say all he did was he told your chemist to go to work and get up a preparation, and he did so?

A. I didn't read the deposition carefully and can't say.

281 X Q. Isn't it a fact that a chemist in your employ, in 1881, was requested to get up a preparation of iron tonic, and did so like he would get up anything else—a prescription?

A. I think he had the compounding of it. I think he put the things together as directed by Brown.

282 X Q. Mr. Shelley himself, in his deposition, says he originated it and got it up?

A. I don't remember what Brown says in his deposition. I only heard it once and don't remember all the points.

283 X Q. Mr. Brown says "the formula was got up by our
132 chemist at my instance and submitted to me for approval by him, and was approved by me." Is that what you call long and patient study?

A. I didn't read the circular and I don't know what Jones thought about it, who wrote the circular. He wrote the circular more as an advertising circular than anything else. I don't suppose he knew anything about how the medicine was gotten up or who by.

(Answer objected to.)

284 X Q. Mr. Shelley says in his deposition, "I originated the formula," speaking of Brown's Iron Tonic, "at the instance of Mr. Eugene L. Brown, some time in 1881 or 1882," so that it was not a very long and patient study after all. When you just go to a clerk and tell him to get up a tonic and he writes out a prescription for you and submits it to you, that is not exactly long and patient study, is it?

(Objected to, because the testimony as quoted does not exclude the idea of long and patient study before getting it up if he says he got it up at his instance.)

A. No, sir; that don't look like long and patient study.

285 X Q. Well, then, that is another slight mistake of the circular, isn't it?

A. It is another mistake in the circular.

286 X Q. I hand you a label marked "N. K. B." Please look at it.

A. It is a circular of "N. B. Brown's Iron Quinine Bitters."

287 X Q. Don't you think that if you had adopted the same method of avoiding mistakes that that Brown did, by using Mr. Brown's initials, adding them to the word "Brown," there would have been less chance of confusion?

Objected to as immaterial and irrelevant.

A. We didn't suppose there would be any confusion, for I can't see any confusion about it one way or the other. The more abbreviated the name of the preparation the easier it is advertised. This may be a good label and all that. I never saw it before.

133 (Label referred to is offered in evidence by complainant's counsel and marked Exhibit 21.)

288 X Q. You stated in your direct examination that most of your circulars were yellow.

A. The most that were put in the boxes?

289 X Q. No.

A. Well, the circulars I had reference to were those little circulars that were put into the boxes of Iron Tonic.

290 X Q. Isn't it a fact that all circulars referring to the Iron Tonic that you have made exhibits to your deposition not one of the five is yellow?

A. My monthly price-list is a separate color that I showed you, but all the circulars are nearly all yellow.

291 X Q. Isn't it a fact that the circulars made exhibits by Mr. McKeighan two are white, one blue, and two green?

A. I expect so.

292 X Q. And not one of them yellow? Then it is a fact that the majority of your circulars are not yellow?

A. No; a majority are yellow, because we put out more of those circulars—yellow circulars—in a month than all the others in a year.

293 X Q. In the label, copy of Brown's Iron Tonic label, attached to your trade-mark the periods appear after each one of the letters composing what you call your trade-mark—a period after B. and one after I. and one after T. It is a fact also, is it not, that in your advertisements the only period appears after either one of your letters is the period after T.?

A. No, sir; as a general thing they appear in all, the same as on this cut. There they don't. Wherever I have noticed it I have corrected it.

294 X Q. In the exhibit I show you, "Exhibit Lincoln's Advertisement," it is so printed as to form the abbreviation Bit., which would naturally be read "Bitters?"

A. I never saw bitters abbreviated that way. Nobody
134 would have thought it for bitters. Everybody can see that was never intended for that purpose.

Redirect examination by Mr. McKEIGHAN, for defendants:

295 *X* Q. Mr. Lincoln, the yellow circular which you say you sent out the most of—is that it that you have in your hand?

A. We have one of that kind and one of six folds—the same color.

296 Q. Are you willing to have that attached to your deposition?

A. Yes, sir.

(Paper offered in evidence by the defendants and marked Exhibit 22).

297 Q. Something has been said about the time you began to advertise in the newspapers Brown's Iron Tonic. State whether or not before that time you had sent out any circulars.

A. Yes, sir; we sent out circulars.

298 Q. In what year?

A. 1882. I don't think we sent out circulars until 1883.

299 Q. How early in 1882?

A. I can't tell you. I think we sent out circulars immediately after the beginning of 1882.

300 Q. Something has been said about the first record of sales that you had of the tonic. What kind of sales had you then, and did you keep a record of them?

A. If a man comes in and buys in the store and pays for them no record is made of them—in the retail department of it. We sold them there before we sold to anybody abroad, because it took some little time for them to get them acquainted with it. We only had two travellers.

(Objected to as not brought out on the cross-examination.)

301 Q. Now, this wood cut that has been referred to—what do you say—what instructions or directions did you give to the party in St. Louis, or how did you indicate to him what you wanted done?

A. Why, we wanted, or I instructed him to make a wood cut with the trade-mark on it, and wrote the wording that I
135 wanted on it, to make a cut so long (indicating) for me to put in the newspapers as an advertisement.

(Question objected to as not brought out on the cross-examination.)

302 Q. How long did you use that?

A. About a year.

303 Q. How long since you used it?

A. I don't think I have used it since 1884. I think I used it in 1884.

304 Q. Mr. Lincoln, who wrote the circular Exhibit 19?

A. Robison A. Jones.

305 Q. Where did he write it?

(Objected to as immaterial and irrelevant.)

A. I think he was in town when he wrote it. He was our traveller.

306 Q. What did you have to do with it?

(Same objection.)

A. I don't think I had anything to do with it. He wrote it up. We had it printed in a hurry to mail it, and I didn't look over it carefully. I think I read it, but I didn't discover the error in it.

307 Q. You would have felt badly if there was an error of six months in this, wouldn't you?

A. I never thought it amounted to anything, whether he said six months or six years. I never paid any attention to it. It was more to draw attention to it than anything else.

308 Q. Now, after Mr. Brown went out what time or care did you devote or what changes did you make in the liquid preparation itself?

(Objected to as immaterial and irrelevant.)

A. I changed it somewhat by, I think, improving it. I could hardly tell you the particular changes I made, but I think I improved the preparation a great deal in its character.

309 Q. What is the custom in reference to proprietary medicines in using all the name of the proprietor in connection with
136 the medicine, as to the use of his Christian name or initial letters?

(Objected to as irrelevant and as not called out on the cross-examination.)

A. I do not know that there is any particular custom. People use whatever they think proper. Oftentimes they put up preparations without using any name connected with the concern. I make a preparation called Smith's Chill Tonic.

Signature waived.

CHRISTIAN F. G. MEYER, being called and sworn on behalf of the defendants, testified as follows:

(By Mr. MCKEIGHAN:)

1 Q. State your name, age, and business.

A. My name is Christian F. G. Meyer; 56 years old; wholesale druggist.

2 Q. Are you one of the defendants in this case?

A. So it seems; yes, sir.

3 Q. What is your firm name?

A. Meyer Bros. & Co.

4 Q. How long have you lived and been engaged in the drug business in St. Louis?

A. Since September, 1865.

5 Q. What has been the different styles of your firm?

A. It never has changed.

6 Q. What kind of business have you carried on, say, during the whole time you have been in business in reference to its being a large or small business?

A. Well, we commenced as moderate dealers—not very small, perhaps, in the beginning—until we have attained what is generally

considered good, respectable dimensions, and we have the name, at least, of being called the largest dealers in the country.

7 Q. Do you know anything about Brown's Iron Bitters, manufactured by the Brown Chemical Company, of Baltimore, Maryland?

A. Yes, sir; I know there is such an article.

137 8 Q. Have you handled it any?

A. Yes, sir; sold the article.

9 Q. Is this the article, marked Exhibit D, filed October 4, 1886, as a part of your answer?

A. Well, sir, I do not know that. I believe this is the second time I ever looked at the bottle, so I can't swear. This is like the first I saw, and I suppose it is. I don't look at our goods that we handle, as a rule, unless there is some special reason for it. I only see the boxes when they come in and know them better that I do the inside appearance.

10 Q. How long have you sold that medicine?

A. It has been several years.

11 Q. About how many years, to the best of your recollection?

A. My recollection wouldn't be as good, but one of my partners looked up the books. As far as my memory goes I would say several years; either five or 6 or 7. I don't know now.

12 Q. What has been the character of your sales annually—as to the amount?

A. It has been quite considerably large.

13 Q. Do you know Mr. Powell, one of the managers of the Brown Chemical Company?

A. Yes, sir; I know him personally.

14 Q. Do you know Mr. Lincoln, of Little Rock—C. J. Lincoln?

A. Yes, sir; personally.

15 Q. Do you know anything about his preparation, called Brown's Iron Tonic, marked Exhibit C to your answer?

A. Yes, sir; I presume that is the article we sold by that name.

16 Q. Do you know how much you have sold of it?

A. No; I do not.

17 Q. Do you recollect about the time your answer was put in?

A. Yes, sir.

18 Q. Have you any recollection of looking up the amount?

A. At that time we looked it up. As near as I can remember, it was between three and four gross.

19 Q. Did you ever have a conversation with Mr. W. S.

138 Powell about your selling Brown's Iron Tonic?

A. Yes, sir; I remember that Mr. Powell came into our office at one time.

20 Q. How long before this suit was brought?

A. I should think three or four months; that is my recollection, but I am not sure.

21 Q. What occurred in that conversation?

A. Mr. Powell, in the course of our conversation, called my attention to the fact that we were selling something which he considered an imitation—I suppose that would be the proper word—of Brown's Iron Bitters, and he alluded to Brown's Iron Tonic made at Little

Rock by C. J. Lincoln & Co., and I was greatly surprised at such remarks, because I knew that we were very particular in not handling any imitations.

22 Q. State what you told him.

A. Well, then I asked our man to order two bottles down, one of each kind, to let me see what ground Mr. Powell had to make such a statement, and when I——

23 Q. Were they sent down?

A. They were sent down immediately.

24 Q. Was Mr. Powell present?

A. Yes; and I showed him there was neither any similarity in appearance or name, as far as my judgment and experience as a dealer went, and he had to admit that there was not.

25 Q. What did he say?

A. Well, of course, I can't say exactly.

26 Q. Well, the substance.

A. Well, he at all events insisted it was so, and wanted me to promise him that we wouldn't handle it any more, and I told him I couldn't do so unless I was convinced that it was an article that would be considered an imitation of his preparation, and that I couldn't see it, and that I didn't think anybody else who had any judgment on matters of the kind would say so; that is the substance of our conversation; of course, I don't remember the words.

139 (So much of the answer as gives the opinion of Mr. Meyer in reference to the infringement objected to as incompetent and what he stated as incompetent.)

27 Q. Have you ever seen Mr. Powell since?

A. I have never seen him since, I don't believe.

28 Q. Do you know where he had been or come from when he was here?

Objected to as immaterial and irrelevant.

29 Q. He came from Cincinnati and Louisville, he told me.

30 Q. Did you have any knowledge of his being at Little Rock?

Objected to as immaterial.

A. I know nothing about it.

31 Q. State what there is similar between these two exhibits, A and C, to your answer.

(Objected to as calling for secondary evidence, the exhibits themselves being the best evidence, and as leading.)

A. My impression is that anybody that can see and has eyes can see there is a great difference in the similarity, and that there is no similarity, in other words, as being deceiving.

32 Q. State what there is about those that would tend to make purchasers, either at wholesale or retail, confuse one with the other.

Objected to on the same ground as irrelevant and incompetent.

A. I don't see how anybody could be deceived in that way.

33 Q. In what way did you handle those goods—Brown's Iron

Bitters and Brown's Iron Tonic? Did you handle them on commission or purchase them outright?

Objected to as irrelevant.

A. Purchased them outright.

34 Q. What other iron remedies do you know of in the
140 trade—bitters or tonics?

(Objected to as irrelevant.)

A. The most prominent I recollect of now is Harty's Iron Tonic.

35 Q. How long has that been sold, to your knowledge?

(Objected to on the same ground as before.)

A. I have sold it longer than I have been in business in St. Louis. I sold it in Indiana before I came here.

36 Q. To what extent is it sold?

(Same objection.)

A. It is sold quite freely.

37 Q. The question is whether it is a medicine that there is a great demand for.

A. It is a prominent article.

38 Q. State what the custom is, if you know, in reference to proprietary medicines, having upon them or upon their wrappers the proprietor's name, having also the Christian name or initials. State how that is in reference to patent medicines.

(Objected to as irrelevant and incompetent.)

A. No case occurs to me now where the initials of the Christian names are used.

39 Q. How is it generally done? What is used?

(Objected to as irrelevant.)

A. Just the name. For instance, Jayne's Expectorant, Ayer's Cherry Pectoral, Townsend's Sarsaparilla, and Bull's Tonic, etc.

(Answer objected to.)

40 Q. Have you anything to do with Mr. Lincoln's advertising or what he does to put his article on the market?

(Objected to as irrelevant.)

A. Nothing whatever.

41 Q. What knowledge have you, if any—and, if you have any, state the particulars of it—of Brown's Iron Bitters and Brown's Iron Tonic being confused or taken for each other or called for each other?

141 A. No such case known to me, where they have been taken one for the other.

42 Q. Do you know of any case where Brown's Iron Bitters has been called Brown's Iron Tonic?

A. No, sir; I do not.

43 Q. How is it always designated, as far as you know?

Objected to, because it don't appear that the witness knows anything about the retail trade—the way things are called by customers.

A. We get our demand by mail, as you know, and they call for whatever they want.

44 Q. Have you ever known of Brown's Iron Bitters being called for by the name of Brown's Iron Tonic?

A. I have not.

(Objected to as a matter about which the witness knows nothing specially, and as irrelevant.)

45 Q. How many times have you known of Mr. Powell being in St. Louis since 1882?

(Objected to as irrelevant and immaterial.)

A. I have known of twice, positively.

46 Q. When was that?

(Objected to as before.)

A. I don't remember. I know he was here one time previous to the last visit; probably a year or so before.

47 Q. Do you know what particular means your concern uses to introduce either Brown's Iron Bitters or Brown's Iron Tonic to the trade?

Objected to as immaterial and irrelevant.

A. We use no means at all; simply send what is ordered.

48 Q. Do you publish any price-list?

A. Yes, sir; we publish what we call an annual and a monthly.

49 Q. What do you do with them?

A. Send them to the retail druggists.

50 Q. What does that contain?

(Objected to as immaterial and irrelevant and secondary
142 evidence.)

A. The monthly contains a limited number of articles that we deal in, whereas the annual has a much larger number—an almost complete list of what we handle.

51 Q. It is a regular price-list, is it?

A. Yes, sir.

Cross-examination by Mr. REX, counsel for the complainant:

52 X Q. This Exhibit C, I believe you said this is the style in which Brown's Iron Tonic that you have sold is put up?

A. I presume so. I don't know just how it looks. I didn't look at it before I left home. I never look at bottles.

53 X Q. But to the best of your knowledge and belief it is like this in all respects?

A. Yes, sir.

54 X Q. You do business exclusively as a wholesale establishment?

A. Yes, sir.

55 X Q. You have nothing to do with retail custom in your business?

A. Not as a retail dealer; no, sir.

56 X Q. You speak of the way in which names are used on labels of patent medicines. Don't you think that where a medicine has a reputation as Brown's or Smith's Iron Tonic that it would be a proper way to distinguish another medicine having substantially the same name to use the initials of the later manufacturer, who goes into the market after the other one has become well established by that name?

A. Well, if there was Bull's Sarsaparilla and another one had a sarsaparilla that he was going to put on the market, of course he ought to so distinguish it or else it would be an imitation of the old one, but Brown's Iron Tonic and Brown's Iron Bitters are very different things.

(Objected to as not responsive to the question.)

57 X Q. I say if Bull's Sarsaparilla was on the market and another man should put a sarsaparilla on the market he should use the proper method to distinguish it; and the proper method would be for the latter Bull to put his initials on the label,
143 wouldn't it—at least that much?

A. Well, that, of course, would depend very much on other circumstances. We wouldn't take hold of Bull's Sarsaparilla or any respectable dealer would not if it had a semblance of growing out of the idea that that could be used as a substitute for the original Bull. If Bull came out with Bull's Quinine, of course it wouldn't be Bull's Sarsaparilla.

Examined by Mr. McKEIGHAN:

58 Q. Couldn't other methods be used that would be just as effective in distinguishing between the later preparations by a person of the same name than putting the initials of the later person's name or his Christian name in front of his surname?

(Objected to as not growing out of the cross-examination.)

A. Certainly they could.

59 Q. What other methods could be used?

(Objected to as before.)

A. Well, he ought to add a very important adjective to the name, in my estimation.

60 Q. Suppose the later man's preparation differed in size and color and cuts, if there were any on them, and these other details, what effect would that have in distinguishing, as in this case, Brown's Iron Tonic and Brown's Iron Bitters? Isn't that a good method of distinguishing the two preparations?

(Objected to as incompetent.)

A. When the name is exactly the same name, why, then, the sim-

ple appearance wouldn't, in my estimation, be a sufficient excuse to offer it upon the market.

61 Q. What do you mean by that—the same name?

A. I mean if I had a preparation of Meyer's Sarsaparilla and somebody would put up sarsaparilla—and even if he put it up entirely different—I wouldn't excuse the man for imitating me, nor would any dealer of character.

62 Q. But suppose it was Meyer's Iron Bitters in the first
144 instance and the other man used Meyer's Iron Tonic, what would you say?

A. That illustrates the case entirely. There can be no mistake as to the distinction of the article—so different in its very appellation and name; and then, of course, nobody would find any fault with it.

(So much of the answer as gives the opinion of the witness as to the difference between the two names objected to as incompetent.)

Signature waived.

EDWARD W. SINCLAIR, being duly sworn and examined, testified as follows:

(By Mr. MCKEIGHAN:)

1 Q. You are one of the defendants in this case?

A. Yes, sir.

2 Q. Did you swear to the answer in this case?

A. I did.

3 Q. At the time this answer was filed how much of Brown's Iron Tonic had your concern sold?

A. My impression was it was about 3½ gross.

4 Q. Refreshing your recollection by the answer, state how that is.

A. I suppose that is correct; four gross of bottles before March, 1886, and after that and up to the time of filing the answer 7 gross.

5 Q. Looking at your Exhibit C to your answer, and Exhibit D, state what each one of those exhibits are.

A. This is a bottle of Brown's Iron Tonic, such as we have been selling—Exhibit C; and this is a bottle of Brown's Iron Bitters.

6 Q. How long have you been selling Brown's Iron Bitters?

A. By our books I learned to-day our first purchase was October 17, 1881.

7 Q. And have you sold it ever since?

A. We have sold it ever since.

8 Q. To what extent?

145 A. We have sold probably in the neighborhood of 500 gross altogether as a kind of rough estimate; that may not be within a hundred gross of it, because some of the empties may not have been put down in what we call our stock book.

9 Q. What years did you sell the most?

(Objected to as irrelevant.)

A. That I can hardly tell.

10 Q. State what knowledge you have, if any, of Brown's Iron Bitters being known or called for as Brown's Iron Tonic.

Objected to as leading and incompetent and irrelevant.

A. I do not know that we have ever had an order for Brown's Iron Bitters under the name of Brown's Iron Tonic. We have had an order for Brown's Iron Tonic and sent Brown's Iron Bitters.

11 Q. When was that?

A. Some four years ago, I guess.

12 Q. How did that turn out?

A. It turned out that we sent the man Brown's Iron Tonic afterwards.

13 Q. What did he do with Brown's Iron Bitters?

A. That I have no positive recollection as to whether he retained or returned it, but he ordered Brown's Iron Tonic, which we had never handled at that time, and he wrote back and said he wanted Brown's Iron Tonic, made by C. J. Lincoln & Co., of Little Rock. The names of the parties I can't recall.

14 Q. He wrote back to you after you sent him Brown's Iron Bitters?

A. Yes, sir.

15 Q. That he wanted Brown's Iron Tonic?

A. Yes, sir.

16 Q. Then what did you do?

(Objected to as irrelevant and immaterial.)

A. My recollection is we then ordered C. J. Lincoln & Co. to ship him, as we had never handled it.

17 Q. What other instances of confusion have you ever known?

A. I don't know of any; that is all that I have a recollection of.

146 18 Q. What part do you take in the business of Meyer Brothers?

A. I have charge of the selling department—to look after and buy some goods, and really have charge of the selling department.

19 Q. Do you publish a price-list?

A. We do publish a monthly list in which we don't quote a full line of goods, but we publish a list annually in which we quote all or nearly all the goods we carry of different lines.

20 Q. What have you done in reference to these preparations?

A. We quote them both, Brown's Iron Bitters under the head of proprietary articles and Brown's Iron Tonic under the head of "tonics."

21 Q. What is the general distinction or difference, if any, between bitters and tonics in the trade?

Objected to as incompetent and irrelevant.

A. Well, bitters is supposed to be an alcoholic preparation, whereas a tonic isn't generally considered so; not necessarily so.

22 Q. What other advertising do you do to introduce either one or both these articles to the trade?

A. Nothing, sir.

23 Q. And have never done it?

A. No, sir; we simply supply the demand as called for, but we have never pushed either of them.

Cross-examination by Mr. REX:

24 X Q. In giving a distinction between bitters and tonic you are giving such distinction as is marked in the trade?

A. Yes.

25 X Q. And not a distinction made by ordinary consumers, I suppose. You don't pretend to give the distinction they make?

A. I don't know what an ordinary customer would consider the distinction to be made, but we always considered, and it is generally considered, that all bitters are an alcoholic preparation
147 then basis of which is alcohol.

26 X Q. Isn't whisky one of the tonics?

A. I don't know that you could consider it so. It is considered a stimulant. I don't know that it is considered a tonic. I don't think it is.

27 X Q. Isn't it popularly spoken of as a tonic?

A. Not that I know of. I don't think physicians, as a rule, consider whisky as a tonic.

28 X Q. Is it not a fact that Brown's Iron Tonic and Brown's Iron Bitters are taken and recommended for and taken for the same complaints—the same reasons?

A. I suppose they are, but that don't necessarily follow from the name that they should be. We have what is called "bitters" that are not liquid but dry and intended to be put in whisky.

29 X Q. They are only called bitters in the trade?

A. Bitters by the manufacturer.

30 X Q. If a man were to go into a drug store and ask for bitters he wouldn't expect to get a powder, would he?

A. No, sir.

31 X Q. This is the style in which Brown's Iron Tonic has been put up (referring to Exhibit C)?

A. Yes, sir.

(By Mr. MCKEIGHAN:)

32 Q. What did I understand you were the special qualities of a tonic?

Objected to as irrelevant.

A. It is intended to build up the system and invigorate and strengthen them.

Signature waived.

At this point, by consent, the further taking of depositions in this cause was adjourned until February 17th at 2 p. m.

FEB. 16TH, 1887—2 p. m.

Parties met pursuant to adjournment, when the hearing of
148 testimony in this cause was continued as follows:

Present: As before.

L. F. SCHWABE, of lawful age, being produced, sworn, and examined as a witness on behalf of defendants, testified as follows:

Direct examination by Mr. MCKEIGHAN:

1 Q. What is your age and place of residence?

A. I am 48 and live in St. Louis.

2 Q. How long have you lived here?

A. Since January, 1880.

3 Q. What business have you been in since you have been here?

A. I have been connected with the firm of Meyer Bros. & Co., wholesale druggists.

4 Q. Defendants in the case of Brown Chemical Co. against C. F. G. Meyer *et al.?* What has been the character and nature of your employment?

A. I have had charge of the advertising department from the time I came here.

5 Q. Have you had an experience or means of becoming acquainted in your duties as to the colored paper used by yourself and other people in the trade for "snipes," as they are called, and small posters?

A. Yes, sir.

6 Q. You may state what colored papered is generally used for snipes and small papers.

Counsel for complainant objects as irrelevant and immaterial.

Ans. In the colored paper I have used—at first I used party-colored papers, various colored papers, for "snipes"—that is, small posters. I used various colored papers, and some four or five years ago the last lot I had printed—I think two hundred thousand—I had them all printed in yellow. Do you want the reason?

7 Q. State the reason.

Counsel for complainant makes the same objection as before.

149 Ans. The reason is because yellow will not fade when exposed to the weather as much as other colors. Blue, red, or any of those colors fade and make the poster look dingy in the same was that white looks dirty and bad, and for that reason I adopted yellow altogether some years ago.

8 Q. When you say "I" you refer to the firm of Meyer Brothers & Co.?

A. Yes, sir; I have charge of it and the sole charge of it, really.

9 Q. What are those snipes or posters used for in the trade?

Counsel for complainant objects as irrelevant and immaterial.

Ans. They are used simply to attract attention; for short lines on the article itself, as a rule.

10 Q. How is it with other houses?

Counsel for complainant makes the same objection.

Ans. The color they use?

Mr. McKeighan: Yes.

A. I don't think—well, in fact, I have seen all colors used. great many houses get these snipes printed in a number of differe colors just to make it more attractive; put up in red, blue, yello and every other color, just as it happens. The printers very ofte select the paper entirely.

11 Q. What is this book that I hand you—this pamphlet?

A. That is the St. Louis Drug Market Reporter. This is ou price-list, in which we quote the prices for drugs and medicin each month and have since the 1st day of April, with the exceptio of, perhaps, four or five months in all that time since 1880.

12 Q. What is done with that every month by the firm of Mey Bros. & Co.?

A. We mail it to all the druggists throughout this Western cou try and all the territory anywhere adjacent to St. Louis.

13 Q. To what States do you send this Reporter?

150 Counsel for complainant objects as irrelevant and imma terial.

A. This Reporter goes to Missouri, Kansas, Arkansas, Texa Louisiana, Mississippi, Alabama, some few in Georgia, some few i Florida, Tennessee, Kentucky, Indiana, Illinois, Iowa, Nebraska California, Utah. I don't know whether I have skipped any or no If there is any I have skipped I mean to put it in. In all, las month, we distributed by mail 6,810 of our lists to the druggists.

14 Q. Turning to the head of "bitters" in this Reporter, rea from the publication the bitters advertised.

Counsel for complainant objected as irrelevant and incompeten The book speaks for itself.

Ans. "List of the leading patent medicines and proprietary arti cles.—Bitters: Brown's Iron (5 per cent. off in gross lots), dozen, $8.00 Carter's Liver, 7.50; Drake's Plantation, 8.25; Droomgoole's Female 7.50; Burdock Blood, 8.00; German Hop, 6.50; Graefenberg Health 1.75; Hoofland's German, 8.00; Hostetter's, 8.00; dit-o, 25-case lots 7.75; Roback's, 7.50; Rochester Hop, 7.00; Sherman's Prickly Ash 7.50; ditto, ditto, ditto, 6 dozen, 5 per cent. off; 1 gross and upward 8 per cent. off; Dr. S. O. Richardson's Sherry Wine, $8.00; Walker' Vinegar, 7.50; Warner's Safe Tonic, large, 7.00; small, 3.75; Wes India, quarts, 1 dozen in case, 6.00; ditto, pints, 2 dozen in case 7.00 per case; White's Stomach, per dozen, 7.50; Wilder's Stomach $7.75; Wakefield's Wine, 4.75." That is all the bitters.

15 Q. Whose bitters heads the list?

Counsel for complainant objects as irrelevant and incompetent The book speaks for itself.

Ans. Brown's Iron Bitters.

16 Q. Turn to the head of "tonics" in your Reporter and read the tonics advertised.

151 Counsel for complainant objects as irrelevant and incompetent and as secondary evidence. The book speaks for itself.

Ans. "Tonic: Ash, dozen, $7.25; Carolina Tolu (5 to 10 dozen, $7.85), $8.00; Harter's Iron, 7.50; Day's Ague, 7.00; Kress' Ague, 7.00; Colden's Liquid Beef, 8.00; Hoofland's German, 12.00; Hughes' Ague, 7.00; Merrell's Female, 7.50; Parker's Ginger, large 23–40 lots, 4 per cent. off, 7.80; Abram's Chill, 7.00; Schenk's Seaweed, 8.00; Smith's Chill and Fever, large, 6.50; ditto, small, 3.50; Wilhoft's, 7.00; ditto, 5 per cent. allowed on 1-gross lots; Wintersmith's Ague, 7.00," and so on.

17 Q. Have you read all the tonics that are advertised?

A. Yes, sir.

18 Q. Do you find among them Brown's Iron Tonic?

A. No, sir.

19 Q. What is the date of this?

A. This is the issue of January.

20 Q. What year?

A. 1887.

21 Q. Since you have been with the house, up to the present time, state whether or not Brown's Iron Tonic has ever been quoted or referred to in any of the monthly Reporters.

Counsel for complainant objects as leading, incompetent, and immaterial.

Ans. It has never been quoted in the price-list in the prices of the leading patent medicines and proprietary articles.

22 Q. State how it is with reference to Brown's Iron Bitters and how it has been.

Counsel for complainant objects as irrelevant and incompetent.

Ans. As far as I can remember, Brown's Iron Bitters have been quoted from the time that we commenced publishing the list
152 of the leading patent medicines and proprietary articles. I don't think that we published this until 4 or 5 years ago. I wouldn't be positive about the date.

23 Q. Have you any recollection of the subject of Brown's Iron Bitters being quoted?

A. No, sir; I have no recollection. I know it has been there for several years, but I cannot say just how long.

24 Q. You have a recollection that it has been so quoted for several years?

A. Yes, sir; I can get the exact dates of anything of this kind by looking back over our files, of course.

25 Q. In what way have you advertised or quoted, if at all, Brown's Iron Tonic?

A. We have advertised that the same as we would any other paid

advertisement—the same as we would Brown's Iron Bitters or other advertisement.

26 Q. In what way have you advertised it?

A. We have advertised it with a quarter page in this same j nal, for which we are paid so much per year, the same as any o advertisement.

Counsel for complainant objects to so much of the answer as r to how they are paid for the advertisements they insert in this cular as incompetent and irrelevant.

27 Q. Referring to that Reporter, where is that?

A. On page 34.

28 Q. Who furnishes you that?

Counsel for complainant objects as incompetent and irrelevan

Ans. C. J. Lincoln, of Little Rock.

29 Q. Who pays the house for that, if anybody?

Counsel for complainant makes same objection.

Ans. C. J. Lincoln.

30 Q. Does Meyer Bros. & Co. publish, or does it not, an ann price-list?

Counsel for complainant objects as leading and irrelevant.

153 Ans. Yes, sir.

31 Q. Have you looked for one of the annuals?

A. No, sir; I did not.

32 Q. State how it happens that these Reporters contain ad tisements of different parties.

Counsel for complainant objects as irrelevant.

Ans. We solicit those advertisements, to a certain extent, the sa as a newspaper does, and others send them in to us without solicitation, in order to advertise their goods. We are liable to s circulars to parties, and we want the money to help pay for the pense of the book, and, as a matter of course, we insert advert ments for that purpose.

33 Q. Are you willing that this should be attached to your de sition as a part of the same?

A. Yes, sir.

The book referred to is offered in evidence and marked "Defe ant's Exhibit No. 23."

34 Q. I notice in your Reporter a quotation of Harter's I Tonic. State what knowledge you have of that tonic being u the market.

Counsel for complainant objects as irrelevant.

Ans. My impression is that Harter's Iron Tonic has been quo in the book there from the time the list was originally made several years ago. I have known Harter's Iron Tonic, I guess,

the market for 8 or 9 years. I don't know that I have, that length of time—ten years, perhaps.

35 Q. State what sort of a preparation it is, with reference to popularity or extensive sales of it on the market.

Counsel for complainant makes the same objection.

Ans. As far as I know, it is a good selling medicine, though I am not well posted as to the sales of anything except my own, Prickly Ash.

36 Q. What is this book that you have in your hand (the same having been sent for)?

154 A. That is Meyer Bros.' Illustrated Catalogue and Price Current.

37 Q. What is it with reference to it being a monthly or an annual?

A. It is an annual, published yearly, as a rule.

38 Q. Turn to the head of bitters and read the bitters that are advertised, or a few of them.

Counsel for complainant objects, as calling for irrelevant and immaterial evidence.

39 Q. I will put this question: Read any quotation or reference you find there to the chemical preparation called Brown's Iron Bitters.

A. At the top of page 183 appears "Bitters, Brown Chemical Company's Iron, dozen, $8.00."

40 Q. Turn to the head of tonics and read any reference you may find there to Lincoln's preparation, called Brown's Iron Tonic.

A. "Tonic, Brown's Iron, Lincoln's, $6.00 a dozen."

41 Q. Is there any other reference to Brown's tonics?

A. Tonic, Brown's Catalina Wins, $9.00 a dozen; Tonic, Brown Medicine Company's Pepsin, $3.50, and Brown's Iron, Lincoln's.

Counsel for complainant objects to so much of the answer as refers to any other tonic than Brown's Iron Tonic as being irrelevant and immaterial.

42 Q. State whether you are willing to have the copy of the annual Price Current that you have in your hand attached to your evidence as part of your deposition?

A. No, sir.

43 Q. Why?

A. Because we are out of them and we need that in the business at the store; besides, that is a mutilated copy. There is some cut out of it, as you see. We have run short of them. The edition is exhausted.

44 Q. To whom are those sent?

A. To the druggists throughout the same territory that the Drug Reporter is sent.

Cross-examination by Mr. REX, for complainant:

45 X Q. Is the advertisement or quotation of Brown's Iron
155 Tonic which you have referred to the only one which appears in Meyer Bros. & Company's Illustrated Annual Catalogue for 1885?

Ans. I don't know whether it is or not. (Witness examines book.) I do not see anything except what I have referred to.

46 X Q. This illustrated catalogue from which you have read and the number of the St. Louis Drug Market Reporter which has been made an exhibit to your deposition are publications which go to persons in the trade exclusively, are they not?

A. Yes, sir; supposed to; being also some sent to wholesale grocers here in the city simply, outside of the trade, but very few.

47 X Q. They do not go into the hands of persons who purchase the medicines referred to in them for their own use?

A. No, sir; not at all.

48 X Q. You speak of the color of the posters which are used by different druggists—wholesale druggists. Do I understand you to say that different ones have different *tests* about the colors?

A. Yes, sir.

49 X Q. One uses one color, another another color?

A. To a certain extent; yes, sir.

Redirect examination by Mr. MCKEIGHAN, for defendants:

50 Q. What do you mean by saying that to a certain extent druggists have different tastes as to the color of "snipes?"

A. Simply that some parties might consider it would look better to have different colors. You can't do better than just take my own experience in that. When I first started in I had all sorts of colors—blue, red, green, yellow, and white. I found that the colors faded; that the yellows kept their colors better than any other—less change in the air outdoors, and the result was—I supposed other druggists were the same. I never heard the question brought up.

Counsel for complainant objects to so much of the answer as refers to his own experience as to the best colors to use as immaterial and irrelevant.

(Signature waived.)

156 United States Circuit Court, Eastern District of Missouri.

BROWN CHEMICAL COMPANY
vs.
CHRISTIAN F. G. MEYER *et al.* } In Equity.

In the matter of interrogatories heretofore filed by the defendants to be propounded to Dr. J. B. Bond and others the clerk will please file the objections hereto annexed.

REX & MOODY,
Solicitors for Complainant.

The fifth interrogatory is objected to as incompetent, immaterial, and irrelevant because it calls for a conclusion on the part of the witness as to facts not within his knowledge and for conjectures as to the conclusions of others. It is immaterial because it is well settled that the circumstance that persons in the trade may not be deceived is of no consequence.

The 8th interrogatory is objected to on the ground that it calls for secondary evidence, the exhibits themselves being the best evidence.

The 9th interrogatory is objected to on the same ground.

The 10th interrogatory is objected to on same ground and as leading.

The 11th interrogatory upon the same ground and as calling for a conclusion of law.

The 12th interrogatory for the same reason and as leading.

157 In the Circuit Court of the United States for the Eastern District of Missouri.

BROWN CHEMICAL COMPANY, Complainant,
vs.
C. F. G. MEYER *et al.*, Defendants.

Interrogatories to be Exhibited and Propounded Severally to Dr. J. B. Bond, of Little Rock, Arkansas, upon Commission Issued in said Cause.

Int. 1st. State your name, age, residence, occupation, and whether you know the parties to the suit, or C. J. Lincoln, of Little Rock, or E. L. Brown, formerly of Little Rock, now of Memphis, Tennessee.

Int. 2nd. If in answer to interrogatory first you state that you are in the drug business, state how long you have been engaged in such business, and where.

Int. 3rd. State what knowledge you have of the preparation of plaintiffs called Brown's Iron Bitters and of the preparation of C. J. Lincoln & Co., of Little Rock, Arkansas, called Brown's Iron Tonic, and also state whether you have ever engaged in the sale of either of said preparations, and, if so, for what length of time, and where, and to what extent, to the best of your recollection.

Int. 4th. If you have before you wrappers or cartons or both taken from the bottles containing either or both of said preparations, indicate each and have the same marked, if you will, for identification and attached to your deposition; or, if attached to the deposition of any other witness, refer to same appropriately.

Interrogatory 5th. State what knowledge you have as to whether or not said Brown's Iron Bitters and Brown's Iron Tonic are known to the drug trade as distinct preparations. State all you know upon this subject.

158 Int. 6th. State what knowledge you have as to Brown's Iron Bitters and Brown's Iron Tonic ever being mistaken for each other, either by druggists or purchasers, either at wholesale or retail, or of being sold for each other.

Int. 7th. Is it a fact or is it not that you never knew of these two preparations ever having been mistaken for each other or sold for each other?

Int. 8th. Examine the wrappers and cartons of each of said Brown's Iron Bitters and Brown's Iron Tonic and state what the differences are between them both as to size of bottle, color of wrappers and cartons, shape, language upon them, devices on either and each, and every other matter of detail connected therewith.

Int. 9th. State, now, what there is similar between said preparations and the bottles, wrappers, cartons, and devices.

Int. 10th. Is it a fact or is it not that the only point of similarity in the appearance of said preparations is in the use of the two words in both, viz., Brown's Iron?

Int. 11th. Examine again these two preparations as they are sold in the trade and state in what particular the preparation Brown's Iron Tonic is calculated to deceive or mislead purchasers into the belief that in buying it they are buying Brown's Iron Bitters.

Int. 12th. Is it not a fact that there is nothing about the preparation called Brown's Iron Tonic calculated to mislead or deceive purchasers of such medicines into the belief that they are buying Brown's Iron Bitters?

Int. 13th. To what extent is iron used in medical preparations and for what length of time?

Int. 14th. State any other matter or thing within your knowledge likely to be of benefit or advantage to either party to this suit.

BOYLE, ADAMS & McKEIGHAN,
Solicitors for Defendants.

159 In the Circuit Court of the United States for the Eastern District of Missouri.

BROWN CHEMICAL COMPANY, Complainant,
vs.
C. F. G. MEYER *et al.*, Defendants.

Interrogatories to be Propounded to C. M. Rome, of Little Rock, Arkansas, in said Cause.

Interrogatory 1. State your name, age, place of residence, and occupation.

Interrogatory 2. State whether or not in June and July, 1886, before and since, your occupation was that of bill-poster in Little Rock, Arkansas.

Interrogatory 3. State whether or not you are acquainted with C. J. Lincoln, of Little Rock.

Interrogatory 4. State whether or not you are acquainted with Robert T. Jackson, salesman for the Brown Chemical Company, of Baltimore, Md.

Interrogatory 5. State whether or not in June or July, 1886, or, if not then, at any other time, stating the time, you put up any posters for said C. J. Lincoln advertising Brown's Iron Tonic. If so, state, as near as you can recollect, what they contained, and if you have before

you a copy of said poster attach, if you will, the same to your deposition as part of the same, marking it for identification.

Interrogatory 6. State what directions, if any, Mr. Lincoln gave you with respect to putting up said posters.

Interrogatory 7. State who had the said posters printed and what the color of said posters were and how it happened that they were yellow, if such was their color. What did Mr. Lincoln have to do with the posters being printed or made of such colored paper or material?

160 Interrogatory 8. State whether or not in June or July, 1886, or at any other time you had a conversation with said Robert T. Jackson, of Little Rock, Arkansas, with reference to these posters and your putting up the same.

Interrogatory 9. If in answer to interrogatory 8 you state you had any conversation with Mr. Jackson upon the subject of said posters or your putting them up, state whether or not you said to him substantially or at all that you were sorry to work against the complainant, The Brown Chemical Company, but that you were compelled as a matter of business to put up what was given you; that you had been employed by C. J. Lincoln, of Little Rock, Ark., to post the town with his (Lincoln's) posters, and that Lincoln was about to make use of a copy of another poster used by the complainant; also state whether you said in the same conversation that Lincoln's posters had been posted in large numbers in Little Rock under Lincoln's direction, and that Lincoln had informed you that he would give you a great deal of posting to do of a similar kind in other places, and that Lincoln intended to follow Jackson and post other places as Lincoln had posted Little Rock.

Interrogatory 10. If you have stated that you had a conversation of any kind with Mr. Jackson in Little Rock, Ark., with reference to said posters, state what such conversation was, what he said to you and what you said to him on the subject of posters, and when and where such conversation was held.

Interrogatory 11. State any other matter or thing which you may recollect which would be of advantage or benefit either to The Brown Chemical Company, complainant, or the said defendants.

BOYLE, ADAMS & McKEIGHAN,
Solicitors for Defendants.

161 *Interrogatories to be Propounded to Mrs. J. G. Bottsford, of Little Rock, Arkansas.*

Interrogatory 1. State your name, age, and place of residence, and if you live in Little Rock, Ark., state on what street and how long you have lived there.

Interrogatory 2. Do you know C. J. Lincoln, of Little Rock, Arkansas?

Interrogatory 3. Do you know or did you ever meet Robert T. Jackson, an employee of the Brown Chemical Company? If so, state where and when you met him. State whether or not you had a conversation with him with reference to complainant's prepara-

tion called Brown's Iron Bitters or C. J. Lincoln's preparation called Brown's Iron Tonic.

Interrogatory 4. If you state in answer to interrogatory 3 that you met said Robert T. Jackson or know him, and that you had a conversation with him in the summer of 1886 or at any other time at your house or elsewhere, state whether or not you told him, the said Jackson, that you had been much benefited by taking Brown's Iron Bitters, and that upon making such remark you were corrected by your daughter, who was present, and who said that the medicine which you had been using was Brown's Iron Tonic.

Interrogatory 5th. If you have stated that in the summer of 1886 you had a conversation with Robert T. Jackson or any other person whose name you may not know or at any other time with reference to the preparations of complainant and defendants or either of them, state whether or not you told Mr. Jackson that you were led to try the medicine you had been using by reading one of the Brown Chemical Co. books relating to Brown's Iron Bitters, published by the Brown Chemical Co.

Interrogatory 6. If you have stated that in the summer of 1886 you had a talk with said Robert T. Jackson about Brown's Iron Bitters or Brown's Iron Tonic, state fully all that passed in
162 that conversation, as far as you can remember, by stating what was said by Mr. Jackson, what by you, and what by your daughter.

Interrogatory 7. State whether or not it is a fact that you were led to use Brown's Iron Tonic by reading a book published by the Brown Chemical Co. upon the subject of Brown's Iron Bitters.

Interrogatory 8. State whether or not you ever used Brown's Iron Tonic, and, if so, how you came to use it.

Interrogatory 9. State whether or not you ever used Brown's Iron Bitters, and, if so, how you came to use that preparation.

Interrogatory 10. State whether or not you ever heard Brown's Iron Bitters called Brown's Iron Tonic.

Interrogatory 12. State any other matter or thing within your recollection which would be of benefit or advantage to either party in this case.

BOYLE, ADAMS & McKEIGHAN,
Solicitors for Defendants.

Interrogatories to be Propounded to Miss Lottie Bottsford.

—. State your name, age, and place of residence, and if you live in Little Rock, Ark., state how long you have lived there and on what street or streets.

Interrogatory 2. State whether you know C. J. Lincoln, of Little Rock, Ark.

Interrogatory 3. State whether or not you know Robert T. Jackson, an employee of the Brown Chemical Company, of Baltimore, Md.

Interrogatory 4. State what relation Mrs. J. B. Bottsford is to you.

Interrogatory 5. State whether or not you were present at a con-

versation between the said Jackson and your mother, Mrs.
163 Bottsford; and, if so, state where and what it was; or, if you do not now remember the name of the person who may have had such a conversation, state whom he represented himself to be.

Interrogatory 6. If you have stated that you were present at any such conversation with said Jackson or any other person calling himself said Jackson or any other person holding himself out to be a salesman or other employee of the Brown Chemical Co., state whether or not your mother, Mrs. Bottsford, said to such person, Jackson, or other person that she had been much benefited by taking Brown's Iron Bitters, and whether or not you corrected your mother by saying that the medicine which she had been taking was Brown's Iron Tonic; also state whether or not Mrs. Bottsford in that conversation or any other conversation with said Jackson or other person said she was led to try Brown's Iron Tonic by reading a book relating to Brown's Iron Bitters published by the Brown Chemical Co.

Interrogatory 7. State whether or not you ever heard Brown's Iron Tonic referred to or called Brown's Iron Bitters.

Interrogatory 8. State whether or not you ever heard Brown's Iron Bitters called or referred to as Brown's Iron Tonic.

Interrogatory 9. State whether or not you ever bought and to what extent, either for yourself or your mother, any bottles of said Brown's Iron Bitters.

Interrogatory 10. State whether or not you ever bought for your mother or for yourself any bottles of Brown's Iron Tonic, and, if so, how many.

Interrogatory 11. State any other matter or thing in your recollection which would be of benefit or advantage to either party to this case.

BOYLE, ADAMS & McKEIGHAN,
Solicitors for Defendants.

164 *Interrogatories to be Propounded to W. D. Holman, of Little Rock, Arkansas.*

Interrogatory 1. State your name, age, place of residence, and occupation, and if you are or have been chief clerk in any drug store in Little Rock state how long.

Interrogatory 2. State whether or not you know C. J. Lincoln, of Little Rock, Ark., and how long you know him.

Interrogatory 3. State whether or not you know Robert T. Jackson, salesman of the Brown Chemical Co.

Interrogatory 4. State what knowledge you have of the Brown Chemical Co.'s preparation called Brown's Bitters, and how long you have had knowledge of it, and whether or not in the stores you have been you have sold said Brown's Iron Bitters, and to what extent.

Interrogatory 5. State what knowledge you have of C. J. Lincoln's preparation called Brown's Iron Tonic, how long you have known —, and to what extent it has been sold in the stores in which you have been employed.

Interrogatory 6. State whether or not said Brown's Iron Bitters is or has been referred to or called Brown's Iron Tonic either by the trade or by those who buy it for use, at retail, in drug stores.

Interrogatory 7. State what knowledge you have of said preparations being known and referred to in the trade, or by people buying for use, as distinct preparations, having their distinct and appropriate name.

Interrogatory 8. State whether or not, in the summer of 1886 or at any time, you had a conversation with said Robert T. Jackson with respect to said Brown's Iron Bitters and said Brown's Iron Tonic or either of them.

Interrogatory 9. If you state that you had a conversation with him, state when and where it was. State whether or not you
165 or your employee told Mr. Jackson that you had had a disturbance with a customer who had brought back a bottle of Brown's Iron Tonic which he had bought at your store, claiming that he supposed he was buying Brown's Iron Bitters.

Interrogatory 10. If you state that you had a conversation with Robert T. Jackson on the subject referred to or heard a conversation between said Jackson and your employee, state all that was said, to the best of your recollection, in said conversation, either by yourself or your employee and said Jackson.

Interrogatory 11. State what knowledge, if any, you have of retail customers buying either of said medicines or preparations for use mistaking the one for the other.

Interrogatory 12. State any other matter or thing within your recollection which would be of advantage or benefit to either party to this case.

BOYLE, ADAMS & McKEIGHAN,
Solicitors for Defendants.

166 United States Circuit Court, Eastern District of Missouri.

BROWN CHEMICAL COMPANY
vs.
CHRISTIAN F. G. MEYER *et al.* } In Equity.

Cross-interrogatories to be propounded on behalf of complainant to Charles M. Rome, a witness called by defendants, at Little Rock, Arkansas.

X Q. 1. Look at the card now shown you (showing witness card marked "Lincoln Poster") and state whether it is not true that you were employed by Dr. C. J. Lincoln, of Little Rock, to post the city of Little Rock with cards or posters like it.

X Q. 2. Did not said Lincoln employ you to post the city of Pine Bluff with similar cards, and also Van Buren and Fort Smith?

X Q. 3. Were not the cards or posters referred to in your last and preceding answers exactly like that marked "Lincoln Poster" in every instance?

X Q. 4. Where did you get these posters or cards to which you have just referred?

X Q. 5. Did C. J. Lincoln pay you for the posting mentioned in your cross-examination?

REX & MOODY,
Solicitors for Complainant.

167 Depositions of J. J. Wiggs, J. B. Bond, P. E. Thomas, C. H. Sayle, and John A. Jungkind, C. M. Rome, and Mrs. J. G. Bottsford and Miss Lottie Bottsford, taken at the office of J. M. Rose, in the city of Little Rock, on the 23rd day of February, 1887, between the hours of 9 a. m. and 4 p. m. of said day, under the commission hereto annexed.

The said witnesses, being each and all first duly sworn, depose as follows:

J. J. WIGGS deposes as follows:

Q. 1. State your name, age, residence, occupation, and whether you know the parties to this suit, or C. J. Lincoln, of Little Rock, or E. L. Brown, formerly of Little Rock, now of Memphis, Tennessee.

Ans. My name is J. J. Wiggs. I live in Little Rock; age, 49 years; and occupation, druggist. I know C. J. Lincoln, E. L. Brown, and Meyer Bros.

Int. 2. If in answer to interrogatory first you state that you are in the drug business, state how long you have been engaged in such business, and where.

Ans. 2. I have been engaged in the drug business here for 15 years, with the exception of 2 years when I was engaged in another business.

Int. 3. State what knowledge you have of the preparation of plaintiff called Brown's Iron Bitters and of the preparation of C. J. Lincoln & Co., of Little Rock, Ark., called Brown's Iron Tonic; and also state whether you have ever engaged in the sale of either of said preparations; and, if so, for what length of time, and where and to what extent, to the best of your recollection.

Ans. 3. I have sold both preparations. I do not remember when I began selling Brown's Iron Bitters, but I commenced selling Brown's Iron Tonic in the latter part of 1881 or early part of 1882.

Int. 4. If you have before you wrappers or cartons, or both,
168 taken from the bottles containing either or both of said preparations, indicate each and have the same marked, if you will, for identification and attached to your deposition; or, if attached to the deposition of any other witness, refer to the same appropriately.

Ans. 4. I have neither one with me.

Int. 5. State what knowledge you have as to whether or not said Brown's Iron Bitters or Brown's Iron Tonic *as* known to the drug trade as distinct preparations; state all you know on this subject.

Ans. 5. They are known as distinct preparations. I have frequently calls for Brown's Iron Bitters, and when I was out of them and tried to sell the party Brown's Iron Tonic *and* almost invariably

failed to do so, the parties saying they wanted Brown's Iron Bitters and did not want the tonic.

Int. 6. State what knowledge you have as to Brown's Iron Bitters and Brown's Iron Tonic ever being mistaken for each other, either by druggists or purchasers, either at wholesale or retail, or of being sold for each other.

Ans. 6. I have never known of an instance of their being mistaken for each other.

Int. 7. Is it a fact or is it not that you never knew of these two preparations ever having been mistaken for each other or sold for each other?

Ans. 7. I never have.

Int. 8. Examine the wrappers and cartons of each of said Brown's Iron Bitters and Brown's Iron Tonic and state what the differences are between them, both as to size of bottles, color of wrappers and cartons, shape, language upon them, devices on either, and each and every other matter of detail connected therewith.

Ans. 8. There is a very distinct difference, but I would have to have the bottles here to tell exactly. Any party that can read can tell the difference at a glance.

Int. 9. State now what there is similar between said preparations and the bottles, wrappers, cartons, and devices.

169 Ans. 9. No similarity whatever.

Int. 10. Is it a fact or is it not that the only point of similarity in the appearance of said preparations is in the use of the two words in both, viz., "Brown's Iron?"

Ans. 10. Yes, sir.

Int. 11. Examine again these two preparations as they are sold in the trade and state in what particular the preparation, Brown's Iron Tonic, is calculated to deceive or mislead purchasers into the belief that they are buying Brown's Iron Bitters.

Ans. 11. None but the name, Brown's Iron.

Int. 12. Is it not a fact that there is nothing about the preparation called Brown's Iron Tonic calculated to mislead or deceive purchasers of such medicines into the belief that they are buying Brown's Iron Bitters?

Ans. 12. None but the name, Brown's Iron.

Int. 13. To what extent is iron used in medical preparations and for what length of time?

Ans. 13. It is in universal use and the history of preparations of iron in medicine extends back several hundred years.

Int. 14. State any other matter or thing within your knowledge likely to be of benefit or advantage to either party to this suit.

Ans. 14. I do not remember any customer ever calling for Brown's Iron Tonic when he wanted Brown's Iron Bitters. I have had them call for Brown's Iron Bitters and say they did not want the tonic; then I have had them call for the tonic and say they did not want the bitters. I sell a great deal more of the tonic than I do of the bitters. In 1854 I sold a preparation called Willis' Iron Bitters.

And further deponent saith not.

J. J. WIGGS.

170 JOHN A. JUNGKIND deposes as follows:

Int. 1. State your name, age, residence, occupation, and whether you know the parties to the suit or C. J. Lincoln, of Little Rock, or E. L. Brown, formerly of Little Rock but now of Memphis, Tenn.

Ans. 1. My name is John A. Jungkind; age, 32 years; residence, Little Rock; occupation, druggist. I know C. J. Lincoln and E. L. Brown.

Int. 2. If in answer to interrogatory first you state that you are in the drug business, state how long you have been in such drug business and where.

Ans. 2. I have been in business in this city on my own account since October, 1881.

Int. 3. State what knowledge you have of the preparation of plaintiff called Brown's Iron Bitters and of the preparation of C. J. Lincoln & Co., of Little Rock, called Brown's Iron Tonic, and also state whether you have ever engaged in the sale of either of said preparations; and, if so, for what length of time, and where and to what extent, to the best of your recollection.

Ans. 3. I have handled both of them. I do not recollect when I began selling them, but I suppose in the spring of 1882.

Int. 4. If you have before you wrappers or cartons or both taken from the bottles containing either or both of said preparations indicate each and have the same marked, if you will, for identification and attached to your deposition, or, if attached to the deposition of any other witness, refer to same appropriately.

Ans. 4. This marked A is from Brown's Iron Bitters. This one marked B is from Brown's Iron Tonic. The Bitters is not as tall as the Tonic and has got considerable block printing on it, with 4 red lines crossing each other from top to bottom and a red note above, "Please read carefully the enclosed circulars," with the Brown Chemical Co., Baltimore, Md., plainly at the bottom of the face of
171 the wrapper. The Brown's Iron Tonic is a long, narrow, maroon-paper carton. It is printed in two colors, a buff tint and black letters, and has got a monogram, B. I. T., in large letters, and it says Brown's Iron Tonic, and at the bottom, on face of wrapper, it says C. J. Lincoln, wholesale druggist, Little Rock, Arkansas; price, $1.00. It is only printed on three sides. The Bitters is printed on 4. It has no special notice on the top.

Int. 5. State what knowledge you have as to whether or not said Brown's Iron Bitters and Brown's Iron Tonic are known to the drug trade as distinct preparations. State all you know upon this subject.

Ans. 5. They are well known as distinct preparations.

Int. 6. State what knowledge you have as to Brown's Iron Bitters and Brown's Iron Tonic ever being mistaken by druggists or purchasers, either by wholesale or retail, or of being sold for each other.

Ans. 6. I do not know. People usually call for what they want and name it correctly. I have never known an instance in my own experience where a customer got the names confused. I have heard

them say they did not want the Tonic but wanted the Bitters, and the reverse, and even mention the names on the face of manufacturer of the Bitters.

Int. 7. Is it a fact or is it not that you never knew of these two preparations ever having been mistaken for each other or sold for each other.

Ans. 7. It is, so far as I know, in my business.

Int. 8. Examine the wrappers and cartons of each, said Brown's Iron Bitters and Brown's Iron Tonic, and state what the differences are between them both as to size of bottles, color of wrappers and cartons, shape, language upon them, devices on either, and each and every other matter of detail connected therewith.

Ans. 8. I have described the wrappers in the fourth interrogatory. The Tonic is in a 14-ounce white glass bottle, long neck, with
172 the names C. J. Lincoln, B. I. T., Little Rock, blown into the bottle on 3 sides; no device of any kind on the cork; nothing around the neck; only one label. Brown's Iron Bitters is in a small bottle, holding about 10 ounces, brown glass, square octagon, with hollow sides, Brown Chemical Co. and Brown's Iron Bitters blown in on each side; two labels, one in front and one on back of bottle, and small device on cork, with big P and small strip around the neck saying, "She well."

Int. 9. State now what there is similar between the preparations, bottles, wrappers, cartons, and devices.

Ans. 9. I have not noticed any, except the name Brown's Iron.

Int. 10. Is it a fact or is it not that the only point of similarity in the appearance of said preparations is the use of the two words in both, of Brown's Iron?

Ans. 10. Yes, sir.

Int. 11. Examine again these two preparations as they are sold in the trade and state in what particular the preparation Brown's Iron Tonic is calculated to deceive or mislead purchasers into the belief that in buying it they are buying Brown's Iron Bitters.

Ans. 11. I cannot see in what particular they would deceive; they are so distinct in their put-up, both bottles, wrappers, and labels.

Int. 12. Is it not a fact that there is nothing about the preparation called Brown's Iron Tonic calculated to mislead or deceive purchasers of such medicines into the belief that they are buying Brown's Iron Bitters?

Ans. 12. Yes, sir.

Int. 13. To what extent is iron used in medical preparations and for what length of time?

Ans. 13. Iron has been used in medicine ever since medicine has been practiced.

Int. 14. State any other matter or thing within your knowledge likely to be of benefit or advantage to either party to this suit.

Ans. 14. I do not recollect any instance where a customer
173 was deceived in buying the Tonic for the Bitters or the reverse.

And further deponent saith not.

JOHN A. JUNGKIND.

P. E. THOMAS testified as follows:

Int. 1. State your name, age, residence, occupation, and whether you know the parties to the suit or C. J. Lincoln, of Little Rock, or E. L. Brown, formerly of Little Rock, now of Memphis, Tenn.

Ans. 1. My name is P. E. Thomas; residence, Little Rock; age, 30 years; I am a druggist; I know C. J. Lincoln and E. L. Brown.

Int. 2. If, in answer to interrogatory first, you state that you are in the drug business, state how long you have been engaged in such business and where.

Ans. 2. I have been in the drug business since 1882, and have also been practicing medicine.

Int. 3. State what knowledge you have of the preparation of plaintiff called Brown's Iron Bitters and of the preparation of C. J. Lincoln & Co., of Little Rock, called Brown's Iron Tonic, and also state whether you have ever engaged in the sale of either of said preparations; and, if so, for what length of time and where and to what extent, to the best of your recollection.

Ans. 3. Yes; I began to sell the tonic in 1882; do not think I began to sell the bitters until Dec., 1884.

Int. 4. If you have before you wrappers or cartons, or both, taken from the bottles containing either or both of said preparations, indicate each and have same marked, if you will, for identification and attached to your deposition, or, if attached to the deposition of any other witness, refer to the same appropriately.

Ans. 4. I refer to the deposition of Mr. Jungkind and adopt his fourth answer. He has described them perfectly.

Int. 5. State what knowledge you have as to whether or
174 not said Brown's Iron Bitters and Brown's Iron Tonic are known to the drug trade as distinct preparations, and state all you know on the subject.

Ans. 5. Yes, sir; they are known as distinct preparations.

Int. 6. State what knowledge you have as to Brown's Iron Bitters and Brown's Iron Tonic ever being mistaken for each other, either by druggists or purchasers, either at wholesale or retail, or of either being sold for each other.

Ans. 6. I have no such knowledge. I have never known a case.

Int. 7. Is it a fact or is it not that you never knew of these two preparations ever having been mistaken for each other or sold for each other?

Ans. 7. No, sir; I never knew of it.

Int. 8. Examine wrappers and cartons of each of said Brown's Iron Bitters and Brown's Iron Tonic and state what the differences are between them both as to size of bottles, color of wrappers and cartons, shape, language upon them, devices upon either and each, and every other matter of detail connected therewith.

Ans. 8. I refer to the 8th answer of Mr. Jungkind and adopt it as my own. They are there perfectly described.

Int. 9. State now what there is similar between the preparations, bottles, wrappers, cartons, and devices.

Ans. 9. Nothing except Brown & iron.

Int. 10. Is it a fact or is it not that the only point of similarity in the appearance of said preparations is in the use of the two words in both, "Brown's Iron?"

Ans. 10. That is all I know of.

Int. 11. Examine again these two preparations as they are sold in the trade and state in what particular the preparation Brown's Iron Tonic is calculated to deceive or mislead purchasers into the belief that in buying it they are buying Brown's Iron Bitters.

Ans. 11. There is none that I know of.

175 Int. 12. Is it not a fact that there is nothing about the preparation called Brown's Iron Tonic calculated to mislead or deceive purchasers of such medicines into the belief that they are buying Brown's Iron Bitters?

Ans. 12. Nothing at all.

Int. 13. To what extent is iron used in medical preparations and for what length of time?

Ans. 13. They have been used ever since I can remember and are mentioned in every book I ever read. They are used in almost everything where they want a tonic.

Int. 14. State any other matter or thing within your knowledge likely to be of benefit or advantage to either party to this suit.

Ans. 14. I know of nothing else.

And further deponent saith not.

P. E. THOMAS.

C. H. SAYLE testified as follows:

Int. 1. State your name, age, residence, occupation, or whether you know the parties to the suit or C. J. Lincoln, of Little Rock, or E. L. Brown, formerly of Little Rock, now of Memphis, Tenn.

Ans. 1. My name is C. H. Sayle; age, 22 years; residence, Little Rock; occupation, druggist. I know C. J. Lincoln.

Int. 2. If in answer to interrogatory first you state that you are in the drug business, state how long you have been engaged in such business, and where.

Ans. 2. I have been engaged in Little Rock in the drug business about 3 years.

Int. 3. State what knowledge you have of the preparation called Brown's Iron Bitters and of the preparation of C. J. Lincoln and Co., of Little Rock, Ark., called Brown's Iron Tonic, and also state whether you have ever engaged in the sale of said preparations; and, if so, for what length of time and where and to what extent, to the best of your recollection.

176 Ans. 3. Ever since I have been in business I have sold Brown's Iron Bitters, made by the Brown Chemical Co., and for the same length of time I have sold Brown's Iron Tonic, made by C. J. Lincoln & Co., of Little Rock.

Int. 4. If you have before you wrappers or cartons, or both, taken from bottles containing either or both of said preparations, indicate each and have the same marked, if you will, for identification and attach to your deposition, or if attached to the deposition of any other witness, refer to same appropriately.

Ans. 4. I refer to the deposition of Mr. Jungkind. The wrapper marked B is a carton that can be opened and the bottle taken out, replaced, and closed. The wrapper marked A is a simple wrapper, solid, so that you cannot get the bottle out without breaking it. The bottle and contents cannot be examined like the tonic can. Another big difference is that the wrapper marked A is white paper and the one marked B is light yellow cardboard. The printing on it is in smaller letters. The bitters has red cross-lines across the bottle. The one marked B has a monogram, B. I. T. The general differerences are readily seen by any observer who would see them both together.

Int. 5. State what knowledge you have as to whether or not said Brown's Iron Bitters and Brown's Iron Tonic are known to the drug trade as distinct preparations. State all you know upon this subject.

Ans. 5. The druggists know the difference because the prices are different and they are made in different cities.

Int. 6. State what knowledge you have as to Brown's Iron Bitters and Brown's Iron Tonic ever being mistaken for each other, either by druggists or purchasers, either at wholesale or retail, or being sold for each other.

Ans. 6. I do not remember ever to have known of a customer who got one when wanting the other, in my experience. If he
177 asks for the tonic he gets Lincoln's and if he asks for bitters he gets the Brown Chemical Co. preparation. Sometimes I ask a man which he wants and he tells me the bitters or tonic.

Int. 7. Is it a fact or is it not that you never knew of these two preparations ever having been mistaken or sold for each other?

Ans. 7. To the best of my recollection I do not remember a party.

Int. 8. Examine the wrappers and carton of each of Brown's Iron Bitters and Brown's Iron Tonic and state what the differences are between them both as to size of bottle, color of wrappers and cartons, shape, language upon them, devices on either and each, and every other matter of detail connected therewith.

Ans. 8. I have answered that in my fourth interrogatory.

Int. 9. State now what there is similar between the preparations, bottles, cartons, and devices.

Ans. 9. The similarity is that both preparations are made by a man named Brown and are both iron preparations.

Int. 10. Is it a fact or is it not that the only point of similarity in the appearance of said preparations is in the use of the two words in both, "Brown's Iron?"

Ans. 10. That is the only point of similarity on the outside of the preparations.

Int. 11. Examine again these preparations as they are sold in the trade and state in what particular the preparation Brown's Iron Tonic is calculated to deceive or mislead purchasers into the belief that they are buying Brown's Iron Bitters.

Ans. 11. The only thing calculated to deceive is the Brown's Iron. They are both Brown's Iron preparations.

Int. 12. Is it not a fact that there is nothing about the prepara-

tion called Brown's Iron Tonic calculated to mislead or deceive purchasers of such medicines into the belief that they are buying Brown's Iron Bitters?

178 Ans. 12. The Brown's Iron would do it with a man who was not a close observer. That is the only thing I know of. It might if he did not observe closely. He might see the Brown's Iron and take a bottle of tonic when he wanted bitters. With that exception there is no reason why it should.

Int. 13. To what extent is iron used in medical preparations and for what length of time?

Ans. 13. Iron is used a great deal in medicine. There is iron in nearly all tonics.

Int. 14. State any other matter or thing within your knowledge likely to be of advantage or benefit to either party to this suit.

Ans. 14. I will say the physicians here prescribe an iron tonic from a formula, which I prepare in the store in small quantities, which they say is similar to Dr. Lincoln's. They prescribed it last spring. I have never seen Dr. Lincoln's formula, but have one they consider similar.

Further deponent saith not.

CLAUDE H. SAYLE.

JOHN B. BOND testified as follows:

Int. 1. State your name, age, residence, occupation, and whether you know the parties to the suit or C. J. Lincoln, of Little Rock, or E. L. Brown, formerly of Little Rock, now of Memphis, Tennessee.

Ans. 1. My name is John B. Bond; age, 50 years; residence, Little Rock; occupation, druggist. I know C. J. Lincoln and E. L. Brown. I do not know the Brown Chemical Co.

Int. 2. If in answer to interrogatory first you state that you are in the drug business, state how long you have been engaged in such business, and where.

Ans. 2. I have been in the drug business since 1872 in Little Rock, Ark.

Int. 3. State what knowledge you have of the preparation *called* of plaintiffs called Brown's Iron Bitters and the preparation of

179 C. J. Lincoln & Co. called Brown's Iron Tonic, and also state whether you have ever engaged in the sale of either of said preparations; and, if so, for what length of time and where and to what extent, to the best of your recollection.

Ans. 3. I am acquainted with both the proprietary medicines named, and have sold them in my drug store for several years.

Int. 4. If you have before you wrappers or cartons, or both, taken from the bottles containing either or both of said preparations, indicate each and have the same marked, if you will, for identification and attached to your deposition, or, if attached to the deposition of any other witness, refer to the same appropriately.

Ans. 4. This one marked A to the deposition of Mr. Jungkind I know to be the wrapper from Brown's Iron Bitters. This one marked B in the same deposition I know to be a carton taken from Brown's Iron Tonic, made by Lincoln.

Int. 5. State what knowledge you have as to whether or not said Brown's Iron Bitters and Brown's Iron Tonic are known to the drug trade as distinct preparations. State all you know upon the subject.

Ans. 5. I know they are known to the trade as distinct preparations. They are not at all liable to be mistaken for each other, and they differ widely in the appearance of the package.

Int. 6. State what knowledge you have as to Brown's Iron Bitters and Brown's Iron Tonic ever being mistaken for each other by druggists or purchasers at wholesale or retail or of being sold for each other.

Ans. 6. In my experience they have not been mistaken for each other either at wholesale or retail.

Int. 7. Is it a fact or is it not that you never knew of these two preparations ever having been mistaken for each other or sold for each other?

Ans. 7. I do not know of ever having sold one when the other was called for.

Int. 8. Examine the wrappers and cartons of each of said Brown's Iron Bitters and Brown's Iron Tonic and state what the differences are between them both as to size of bottles, color of wrappers and cartons, shape, language upon them, devices upon either or each, and every other matter of detail connected therewith.

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Ans. 8. The package of the tonic is considerably larger than the bitters. It is a different color and a distinctive color, too. The printed matter is essentially different. The tonic has a monogram of B. I. T., separated by periods, which the bitters has not or anything similar. The bitters has on the face of the wrapper red lines drawn diagonally, which the tonic has not. The bottles differ in capacity, and the glass of the tonic bottle is white or flint and known to the trade as long-necked panel. The bitters is in an amber bottle, known to the trade as a square panel. The tonic has C. J. Lincoln, Brown's Iron Tonic, Little Rock, blown into the bottle. The bitters has Brown Chemical Co. and Brown's Iron Bitters blown into the bottle. The capacity of the bottles differs at least two ounces in favor of the tonic.

Int. 9. State now what there is similar between said preparations and the bottles, wrappers, cartons, and devices.

Ans. 9. The two words Brown's Iron comprise all the similarity between the bottles, wrappers, cartons, and devices.

Int. 10. Is it a fact or is it not that the only point of similarity in the appearance of said preparations is in the use of the two words in both, viz., Brown's Iron?

Ans. 10. It is a fact.

Int. 11. Examine again these two preparations as they are sold in the trade and state in what particular the preparation Brown's Iron Tonic is calculated to deceive or mislead purchasers into the belief that in buying it they are buying Brown's Iron Bitters.

Ans. 11. They are alike in no essential particular. I have frequently tried to substitute the bitters for the tonic and failed.

181 Int. 12. Is it not the fact that there is nothing about the preparation called Brown's Iron Tonic calculated to mislead or deceive purchasers of such medicines into the belief that they are buying Brown's Iron Bitters?

Ans. 12. It is a fact.

Int. 13. To what extent is iron used in medical preparations and for what length of time?

Ans. 13. Iron is extensively used in medicine and has been since medicine was a science.

Int. 14. State any other matter or thing within your knowledge likely to be of advantage or benefit to the parties to this suit.

Ans. 14. I have never heard the bitters called by mistake of the customer the tonic. My customers are perfectly conversant with the different articles and ask for the article they want and will not take the other.

And further deponent saith not.

JOHN B. BOND.

C. M. ROME testified as follows:

Int. 1. State your name, age, place of residence, and occupation.

Ans. 1. My name is C. M. Rome; age, 46 years; residence, Little Rock, and occupation, bill-poster.

Int. 2. State whether or not in June or July, 1886, before and since, your occupation was that of bill-poster in Little Rock, Arkansas.

Ans. 2. Yes, sir.

Int. 3. State whether or not you are acquainted with C. J. Lincoln, of Little Rock.

Ans. 3. I am.

Int. 4. State whether or not you are acquainted with Robert T. Jackson, salesman of the Brown Chemical Co., of Baltimore, Md.

Ans. 4. I am, sir.

Int. 5. State whether or not in June or July, 1886, or, if not then, at any other time, stating the time, you put up any posters for C. J. Lincoln advertising Brown's Iron Tonic; if so, state, as near as you can recollect, what they contained, and if you have
182 before you a copy of said poster attach, if you will, the same to your deposition as part of the same, marking it for identification.

Ans. 5. I think it was in May, 1886, and not in July, in Little Rock, I posted up some posters for Dr. Lincoln. The one marked Lincoln poster, attached to the interrogatories, is a correct copy, and I make it an exhibit to my deposition. I have no other before me.

Int. 6. State what directions, if any, Mr. Lincoln gave you with respect to putting up said posters.

Ans. 6. Mr. Lincoln gave me directions to post the town well.

Int. 7. State who had the posters printed and what the color of said posters were, and how it happened they were yellow, if such was their color. What did Mr. Lincoln have to do with the posters being printed or made of such colored paper or material?

Ans. 7. The Democrat printed them. I went in there to get them

and Mr. Bettis shows me some. So far as their being yellow, it seemed that that was the only color they had enough of to print them on. I do not think Dr. Lincoln had anything to do with them except to give the order for printing them.

Int. 8. State whether or not in June or July, 1886, or at any other time, you had a conversation with said Robert T. Jackson, of Little Rock, Arkansas, with reference to these posters and your putting up the same.

Ans. 8. I did not have much of a conversation, but will tell how it happened. I started to posting up Dr. Lincoln's posters when I met Jackson at the Pine Bluff depot on a picnic train. Jackson saw me and hallooed to me and told me to come go to the picnic. I told him I could not go, as I had work to do. He asked me what I had to do and I handed out a couple of Dr. Lincoln's posters and showed them to him and he kept them. He said, That is all right, and he and a man of his acquaintance went into Nik's saloon and had a drink. The train had to wait awhile, and we repeated it
183 until the train left, and then he left and I went on with my work.

Int. 9. If in answer to interrogatory 8 you state you had any conversation with Mr. Jackson upon the subject of said posters or your putting them up, state whether or not you said to him substantially or at all that you were sorry to work against the complainant, The Brown Chemical Co., but that you were compelled, as a matter of business, to put up what was given you; that you had been employed by C. J. Lincoln, of Little Rock, to post the town with his posters, and that Lincoln was about to make use of a copy of another poster used by complainant; also state whether you said in the same conversations that Lincoln's posters had been posted in large numbers in Little Rock under Lincoln's directions, and that Lincoln had informed you that he would give you a great deal of posting to do of a similar kind in other places, and that Lincoln intended to follow Jackson and post other places as Lincoln had posted Little Rock.

Ans. 9. No such conversation happened. I did not make any such statement to Jackson.

Int. 10. If you have stated that you had a conversation of any kind with Mr. Jackson at Little Rock with reference to such posters state what said conversation was, what he said to you and what you said to him on the subject of posters, and where such conversation was held.

Ans. 10. I have answered that fully.

Int. 11. State any other matter or thing which you may recollect which would be of advantage or benefit either to the Brown Chemical Co., complainants, or to the said defendants.

Ans. 11. I do not know what other matter I could state that would be of advantage to either party.

Cross-examined:

Int. 1. Look at the card now shown you (showing witness card marked Lincoln Poster) and state whether it is not true that

184 you were employed by Dr. C. J. Lincoln, of Little Rock, to post the city of Little Rock with cards or posters like it.

Ans. 1. Yes, sir.

Int. 2. Did not said Lincoln employ you to post the city of Pine Bluff with similar cards, and also Van Buren and Ft. Smith?

Ans. 2. Dr. Lincoln did not employ me. I went there to do some advertising work and he gave me the work and the cards which I posted up, and got paid for it by Dr. Lincoln.

Int. 3. Were not the cards and posters referred to in your preceding answers exactly like that marked Lincoln poster, in every instance?

Ans. 3. Yes, sir.

Int. 4. Where did you get these posters or cards to which you have just referred?

Ans. 4. At Dr. Lincoln's store.

Int. 5. Did C. J. Lincoln pay you for the posting mentioned in your cross-examination?

Ans. Yes, sir.

And further deponent saith not.

C. M. ROME.

Mrs. J. G. BOTSFORD testified as follows:

Int. 1. State your name, age, and place of residence, and if you live in Little Rock state on what street and how long you have lived there.

Ans. 1. My name is Mrs. J. G. Botsford, of legal age, and I live in Little Rock, on the corner of Markham and Third streets.

Int. Do you know C. J. Lincoln, of Little Rock, Ark.?

Ans. 2. Yes, sir.

Int. 3. Do you know or did you ever meet Robert T. Jackson, an employee of the Brown Chemical Co.? If so, state where and when you met him. State whether or not you had a conversation with him either with reference to complainant's preparation called Brown's Iron Bitters or C. J. Lincoln's preparation called
185 Brown's Iron Tonic.

Ans. 3. I met him one evening last summer. He called at our house, and I remember having a conversation with regard to Brown's Iron Bitters that evening. I did not say anything to him about the tonic, but my daughter said it was in reference to the tonic I was speaking, and she got the bottle and found it was the bitters. I have taken a good many bottles of the bitters.

Int. 4. If you state in answer to interrogatory 3 that you met said Robert T. Jackson or know him, and that you had a conversation with him in the summer of 1886 or at any other time, at your house or elsewhere, state whether or not you told him, the said Jackson, that you had been much benefited by taking Brown's Iron Bitters, and that upon making such remark you were corrected by your daughter, who was present, and who said that the medicine which you had been using was Brown's Iron Tonic.

Ans. 4. I said it was Brown's Iron Bitters and my daughter said it was Brown's Iron Tonic until she looked and saw she was mis-

taken. I told him I could recommend them; that I had used them a long time and they had been very beneficial to me.

Int. 5. If you have stated that in the summer of 1886 you had a conversation with Robert T. Jackson or with any other person whose name you may know or at any other time with reference to the preparations of the plaintiff and defendant or either of them, state whether or not you told Mr. Jackson that you had been led to try the medicine you had been using by reading one of the Brown Chemical Co.'s books relating to Brown's Iron Bitters, published by the Brown Chemical Co.

Ans. 5. No, sir; I never told him that, because I never have read one. I saw it advertised in the paper and thought I would try it, but I never saw one of their books and never read one of them in my life.

Int. 6. If you have stated that in the summer of 1886 you had a talk with the said Robert T. Jackson about Brown's Iron
186 Bitters or Brown's Iron Tonic, state fully all that passed in that conversation, so far as you can remember, by stating what was said by Mr. Jackson, what by you, and what by your daughter.

Ans. 6. I do not remember all he did say, but I told him I could recommend —; that I had tried them and thought they were a splendid bitters. That was about all the conversation.

Int. 7. State whether or not it is a fact that you were led to use Brown's Iron Tonic by reading a book, published by the Brown Chemical Co., on the subject of Brown's Iron Bitters.

Ans. 7. No, sir. I saw it advertised in the paper and told Mr. Botsford I would try it, and did so. I never saw any of the tonic until Mr. Eckford showed me the wrapper awhile ago.

Int. 8. State whether or not you ever used Brown's Iron Tonic; and, if so, how you came to use it.

Ans. 8. No, sir; I never used it.

Int. 9. State whether or not you ever used Brown's Iron Bitters; and, if so, how you came to use that preparation.

Ans. 9. Just as I said. I saw it in the papers and used it.

Int. 10. State whether or not you ever bought Brown's Iron Tonic supposing it to be Brown's Iron Bitters.

Ans. 10. No, sir; I never did.

Int. 11. State whether or not you ever heard Brown's Iron Bitters called Brown's Iron Tonic.

Ans. 11. No, sir; I have never heard that either.

Int. 12. State any other matter or thing within your recollection which would be of benefit or advantage to either party.

Ans. 12. I do not know anything else.

And further deponent saith not.

MRS. J. G. BOTSFORD.

187 Miss LOTTIE BOTSFORD testified as follows:

Int. 1. State your name, age, and place of residence; and if you live in Little Rock, Ark., state how long you have lived there and on what street or streets.

Ans. 1. My name is Lottie Botsford; age, 18; have lived in Little Rock all my life, and live on the corner of Markham and Third streets.

Int. 2. State whether you know C. J. Lincoln, of Little Rock, Ark.

Ans. 2. Yes, sir.

Int. 3. State whether or not you know Robert T. Jackson, an employé of the Brown Chemical Co., of Baltimore, Md.

Ans. 3. Yes, sir.

Int. 4. State what relation Mrs. Botsford is to you.

Ans. 4. My mother.

Int. 5. State whether or not you were present at a conversation between said Jackson and your mother, Mrs. Botsford; and, if so, state where and when it was, or, if you do not know the name of the person who may have had such a conversation, state whom he represented himself to be.

Ans. 5. He represented himself to be Mr. Jackson. I was present, but do not remember what the conversation was. I know it was about Brown's Iron Bitters. I thought it was the Brown's Iron Tonic, and got the bottle, and that showed it was not.

Int. 6. If you have stated that you were present at any such conversation with said Jackson, or a person calling himself said Jackson, or any other person holding himself out to be a salesman or employé of the Brown Chemical Co., state whether or not your mother, Mrs. Botsford, said to such person—Jackson or other person—that she had been much benefited by taking Brown's Iron Bitters, and whether or not you corrected your mother by saying that the medicine she had been taking was Brown's Iron Tonic; also state whether or not Mrs. Botsford, in that conversation or in any other conversation with Jackson or any other person, said she was
188 led to try Brown's Iron Tonic by reading a book relating to Brown's Iron Bitters, published by the Brown Chemical Co.

Ans. 6. I know I corrected her and thought it was the tonic and found that it was not. She read about the bitters in the papers. I do not remember to have heard her say that she used the tonic by reading about the bitters.

Int. 7. State whether or not you ever heard Brown's Iron Tonic referred to or called Brown's Iron Bitters.

Ans. 7. No, sir.

Int. 8. State whether or not you ever heard Brown's Iron Bitters called or referred to as Brown's Iron Tonic.

Ans. 8. No, sir.

Int. 9. State whether or not you ever bought, and to what extent, either for yourself or your mother, any bottles of said Brown's Iron Bitters.

Ans. 9. I do not remember ever buying any; papa always gets them.

Int. 10. State whether or not you ever bought for yourself or mother any bottles of Brown's Iron Tonic; and, if so, how many.

Ans. 10. No, sir; I have not.

Int. 11. State any other matter or thing in your recollection

Lincoln Poster
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Ans. 1. My name is Lottie Botsford; age, 18; have lived in Little Rock all my life, and live on the corner of Markham and Third streets.

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Ans. 3. Yes, sir.

Int. 4. State what relation Mrs. Botsford is to you.

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Ans. 6. I know I corrected her and thought it was the tonic and found that it was not. She read about the bitters in the papers. I do not remember to have heard her say that she used the tonic by reading about the bitters.

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Lincoln Poster

BROWN'S

IRON

PHYSICIANS ∴ PRESCRIBE ∴ IT

TONIC

AS THE

BEST

which would be of benefit or advantage to either party to this case.

Ans. 11. I do not know anything else, only that we have used Brown's Iron Bitters a great while and find them very beneficial.

And further deponent saith not.

LOTTIE BOTSFORD.

(Here follow lithographs marked pp. 189, 190, & 191.)

192 UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri. } *ss:*

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern division of the eastern judicial district of Missouri, do hereby certify the writing hereto attached to be a true transcript of the record, pleadings, and proceedings in case No. 2651, of Brown Chemical Company, complainant, against Christian F. G. Meyer *et al.*, defendants, as fully as the same remains on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in the eastern division of said district, this third day of October, in the year of our Lord eighteen hundred and eighty-seven.

Seal of the United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri.

A. P. SELBY,
Clerk of said Court,
By —— ——, *Deputy.*

[Endorsed:] No. —. United States circuit court, eastern division of the eastern judicial district of Missouri. —— —— against —— ——. Duly certified copy of — in the above-entitled cause.

Endorsed on cover: E. Missouri C. C. U. S. No. 226. The Brown Chemical Company, appellant, *vs.* Christian F. G. Meyer, John F. W. Meyer, Edward P. Williams, Frederick G. Meyer, Theodore F. Meyer, Gustave J. Meyer, and Edward W. Sinclair. Filed October 13, 1887.

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By —— ——, *Deputy.*

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Endorsed on cover: E. Missouri C. C. U. S. No. 226. The Brown Chemical Company, appellant, *vs.* Christian F. G. Meyer, John F. W. Meyer, Edward P. Williams, Frederick G. Meyer, Theodore F. Meyer, Gustave J. Meyer, and Edward W. Sinclair. Filed October 13, 1887.

United States Supreme Court.

BROWN CHEMICAL COMPANY, Appellant, *vs.* CHRISTIAN F. G. MEYER, JOHN F. W. MEYER, Edward P. Williams, Frederick G. Meyer, Theodore F. Meyer, Gustave J. Meyer, and Edward W. Sinclair, Appellees.	October Term, 1890. No. 226.

It is hereby stipulated by and between the solicitors for the respective parties to the above-entitled cause that the annexed are correct copies of letters offered in evidence, and that the same constitute a part of the record and may be used upon the argument of the appeal as if they had been regularly printed according to the rules of this court.

And the clerk of the court is hereby requested to print the same and attach them to the record.

Dated January 3, 1891.

ROWLAND COX,
Complainant's Solicitor.
J. E. McKEIGAN,
Defendants' Solicitors.

Correspondence.

The following are copies of letters offered in evidence:

BALTIMORE, *Aug.* 21*st*, 1882.

Messrs. C. J. Lincoln & Co., Little Rock, Ark.:

RESPECTED GENTLEMEN—In enclosing you receipt for your remittance, call your attention to non-compliance our rebate plan, and enclose duplicate certificate for your signature, without which, amount remitted is only credited on account.

We notice you are manufacturing a Brown's Iron Tonic. Is this a new medicine? If so, are you not trespassing upon our rights? If you were in the field first, we have no desire to make money upon your good reputation where your trade lies, and we will gladly withdraw our advertisements of Brown's Iron Bitters from your section. Our experience is, a conflict never pays any one. We have no desire to pay our money out to advertise Brown's Iron Tonic, and suppose you are in the same position as regards Brown's Iron Bitters.

Your friends, BROWN CHEMICAL CO.

(EXHIBIT No. 9.)

LITTLE ROCK, ARK., *Aug.* 24*th*, 1882.

Brown Chemical Co.:

GENTLEMEN—We have your favor of 21st. inst., and enclose herewith certificate duly signed as requested. As we had signed a

duplicate of the enclosed certificate in making a remittance to you some time since, we did not think it necessary to send a certificate with each remittance; however, we will observe your rules in future. Please send us

1 Gro. Brown's Iron Bitters.

In reply to your inquiry in regard to Brown's Iron Tonic we will say that we commenced manufacturing it since the admission of Mr. E. L. Brown into our firm May, 1881, together with Brown's Hair Dye, and other preparations under his name. This was before you commenced your vigorous system of advertising in this section, and before your goods were much, if any, sold here. Our Tonic is put up in 14 oz. Cod Liver Oil bottles, and has no similarity to yours, either in appearance of the package or the preparation. We send you a bottle by to-day's express, freight paid, in order to show you the goods. We can in turn assure you that we have no desire to make money upon your good reputation, and have never attempted to sell our Iron Tonic when yours was called for, either in our retail or wholesale department.

Mr. Brown, of our firm, traveled 13 years in this State (twelve years for R. A. Robinson & Co., Louisville), and is well known throughout the State, and for that reason we have used his name in connection with several of our proprietary articles.

Hoping this explanation will be satisfactory, and with regards, we are,

Truly yours, C. J. LINCOLN & CO.

(EXHIBIT No. 10.)

BALTIMORE, MD., *Aug. 28th*, 1882.

Messrs. C. J. Lincoln & Co., Little Rock, Ark.:

GENTLEMEN—Inclosing you invoice, thank you for your kind and satisfactory letter. We wish the Brown's Iron Tonic a success, as, upon examination, we cannot see where it conflicts with us, except in the multiplicity of the Brown family.

Your friends, BROWN CHEMICAL CO.

(EXHIBIT No. 11.)

BALTIMORE, MD., *Nov. 21st*, 1882.

Messrs. C. J. Lincoln & Co., Little Rock, Ark.:

GENTLEMEN—One of our customers has sent us your circular, in which you quote, "We are selling Brown's Iron Bitters at $91.20 by full gross, but Brown's Iron Tonic at $6.00 per doz. pays the trade a much better profit and is a superior remedy, &c."

Gentlemen, after your courteous letter of Aug. 24th on the subject of our preparation of iron, you can readily imagine our feelings at the above statement over your firm name, which up to date we have been led to believe would not be associated with anything dishonorable or tricky in trade. Of course you have a right to make Brown's Iron Tonic take the advantage as far as possible of our ad-

vertising, appropriate our strong points in wording on your labels, and appropriate our legitimate profits thereby if you can reconcile your conscience to same, but you have no right to become libelous, as your circular certainly is, and as such we shall resist your encroaches upon our rights. Sell your Brown's Iron Tonic, and all you can, but do it as men, honorable men, but not by trying to injure a competitor's reputation.

Now, to be candid with you, you must either give us your promise in writing before Dec. 5th that you will not issue a similar circular, and that you will do nothing to deter the natural demand for Brown's Iron Bitters, or we will at once give the wording of your circular to every druggist, wholesale and retail, in the U. S., and every general storekeeper in the same territory, with our comments on the same, with a statement of the fact that we will not sell you any more and why, simply because we are afraid of shady transactions. We will also try by law to make you prove your assertions, which, if nothing else, will be very expensive to you.

We have always thought, in point of honor and fair dealing, the wholesale drug trade stood as high, if not higher, than other trades, but it seems, gentlemen, you are taking the initiative steps to bring its fair name in disrepute, and we are sure your action in this matter will be condemned by all fair-minded dealers, and will result very disastrously to you.

In conclusion, we hope you will reconsider your present actions, and calmly come to the conclusion that we are fair in our demands.

Yours, &c., BROWN CHEMICAL CO.

[Endorsed:] Sup. Court U. S. 1890, Oct'r term. No. 226. The Brown Chemical Co, app'l't, *vs.* Christian F. G. Meyer *et al.* Stipulation & addition to record.

[Stamped:] Office Supreme Court U. S. Filed Jan. 9, 1891 James H. McKenney, clerk.

Office Supreme Court U. S.
FILED,
JAN 28 1891
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 226.

THE BROWN CHEMICAL COMPANY,

Appellant,

vs.

CHRISTIAN F. G. MEYER, JOHN F. W. MEYER, EDWARD P. WILLIAMS, FREDERICK G. MEYER, THEODORE F. MEYER, GUSTAVE J. MEYER and EDWARD W. SINCLAIR.

BRIEF OF ARGUMENT ON BEHALF OF APPELLANT.

C. G. Burgoyne, 146-150 Centre Street, N. Y.

Supreme Court of the United States.

No. 226. OCTOBER TERM, 1890.

THE BROWN CHEMICAL COMPANY,
Appellant,

vs.

CHRISTIAN F. G. MEYER ET AL.,
Appellees.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

BRIEF FOR APPELLANT.

Statement of the Case.

This is a suit in equity to restrain what has been designated by this Court "*unfair competition in trade*" (128 U. S., 604), and is brought here by an appeal from a decree of the Circuit Court of the United States for the Eastern District of Missouri dismissing the bill.

The facts of the case as we understand them are stated by the learned Judge below. In his opinion, Judge THAYER states the case as follows:

> "Under the pleadings and proofs I regard it as in substance a proceeding to restrain unfair competition in trade.

It is not a case of infringement of a trade-mark, because the testimony does not show that defendant has appropriated any symbol, device, or word first adopted by complainant which can be regarded as constituting a trade-mark.

Since the year 1879, it appears that complainant has been manufacturing a remedy known and labeled as 'Brown's Iron Bitters' at Baltimore, Md. Defendants, who are wholesale druggists at St. Louis, Mo., for some time past have purchased of Lincoln & Co., of Little Rock, Arkansas, and have been selling in the usual course of business an article known as 'Brown's Iron Tonic.'

A man by the name of E. L. Brown, residing at Little Rock, Arkansas, and at the time a member of the firm of Lincoln & Co., devised the formula for 'Brown's Iron Tonic' in the fall of 1881, and gave the medicine his name. Brown's Iron Tonic does not appear to have entered the market extensively until the spring of 1882, at which time complainant had spent many thousand dollars in advertising 'Brown's Iron Bitters' and the article was in great demand."

Complainant's counsel does not in express terms assert that the words "Brown's Iron Bitters," either singly or collectively, constitute a trade-mark. * * *

The right must be predicated solely on the assumption that the words "Brown's Iron Tonic" so nearly resemble the words "Brown's Iron Bitters" in sound that an ordinary mind would not note the difference, and that the use of the former words by Lincoln & Co. and by the de-

fendants tends to deceive persons who have become acquainted with the reputation of complainant's bitters, but are not familiar with the outward appearance of the packages in which they are contained. * * *

The legal proposition involved is whether one manufacturer of a patent medicine can be enjoined from using certain words on his wrappers merely because they are similar in sound to words which have previously been appropriated by some other manufacturer, the words themselves in both instances being truly descriptive of an ingredient and quality of the medicine and of the person who originally compounded the same, and the packages to which they are applied being totally unlike in outward appearance."

This statement of the case and of the question of law upon which its decision depends (with the important exception of the words "TRULY DESCRIPTIVE"), from the point of view of the appellant, involves no substantial error (28).

Assignment of Errors.

On behalf of the appellant it is respectfully submitted that the Court below erred:

I. Because it decided that the use by the appellees of the designation "Brown's Iron Tonic" was constructively and lawfully an exercise by Eugene L. Brown of the right to use his own name.

The decision should have been that the use of the

designation "Brown's Iron Tonic" was unlawful because that designation is substantially the same to the eye and ear as the designation "Brown's Iron Bitters" previously adopted and popularized by the appellant.

And the Court below erred specifically:

(a) Because it failed to decide that the designation "Brown's Iron Tonic" was selected, adopted and applied, *malo animo*, by those in privity with the appellees.

(b) Because it decided in effect that the appellees had made use of no artifice calculated to deceive and mislead the public.

(c) Because it decided in effect that the use of the designation "Brown's Iron Tonic," apart from the article itself as a trade-name in advertisements, handbills, &c., was immaterial.

II. And the Court below erred because it decided in effect that the use by Lincoln & Co. of Brown's name, after Brown's retirement from the firm of Lincoln & Co. of which he had been a member, was lawful.

The decision should have been that appellees' medicine, being made by *Lincoln* and *not* by Brown, and the name "Brown" being shown to be a personal mark, indicating the product of a particular individual, the use of the term "Brown's Iron Tonic" by appellees admitted of no justification in a court of equity; and, because Lincoln had no lawful right to use Brown's name, the case was with the appellants.

BRIEF OF ARGUMENT.

We beg to direct the attention of the Court to the fact that in some aspects this is a case of very great importance. It presents for the first time in this Court a question, the decision of which will commit the Court to one of two views. A century and a half ago Lord HARDWICKE refused to issue an injunction to restrain the unlawful use of a trade-mark, on the ground that the books contained no precedent which would justify him in so doing (Blanchard vs. Hill, 2 Atk., 484).

An eminent Judge has recently said :

> " *All* practices between rivals in business which tend to engender unfair competition are odious and will be suppressed by injunction " (27 Fed. Rep., 22).

In the interval there may be said to be two lines of reasoning, one looking in the direction of the mind of Lord HARDWICKE, the other looking in the direction of the later and increasing thought.

Prior to the present century, only six cases relating to trade-marks are reported, and the middle of the century had been reached before thirty had arisen. In the next quarter of a century, we find over three hundred, and in the following decade, the adjudications are too numerous to be counted. Of these cases, perhaps a majority may be said to be uninstructive as disclosing any evolution of thought, but it may be said that there are two groups or lines of decision, one of which leads to the protection of industry, enterprise and reputation, and the other of which leads to their destruction. For the first time this exalted source of direction is called upon to indicate which of these lines of thought is right and which is wrong.

First Assignment of Error.

The Court below erred because it decided that the use by the appellees of the designation "Brown's Iron Tonic" was, constructively, a lawful exercise by Eugene L. Brown of the right to use his own name.

Says the Court below:

> "The legal proposition involved is whether one manufacturer can be enjoined from using certain words on his wrappers merely because they are similar in sound to words which have been previously appropriated by some other manufacturer, the words thus used in both instances being *truly descriptive*, and the packages being unlike in outward appearance."

This proposition, as stated, admits of no difference of opinion; but, we submit, that it is not quite the proposition which is here presented. If, for the words "TRULY DESCRIPTIVE," are substituted the words "in the abstract suggestive of facts," the language quoted will be nearer the case, as we understand it.

The opinion of the learned Court below sufficiently states some of the important facts: Complainant's article, **"Brown's Iron Bitters,"** was originated in 1879. The term **"Brown's Iron Tonic"** was first used by one E. L. Brown, whose article did not enter the market extensively

> "Until the spring of 1882, at which time complainant had spent many thousand dollars in advertising Brown's Iron Bitters, and the article was in great demand" (28).

Appellant's efforts and outlays were continued; and before the date of the filing of its bill it had expended an enormous sum of money and effectually popularized the designation, **"Brown's Iron Bitters."** It had painted the name on fences and barns and the sides of mountains, and in a multitude of ways compelled the attention of the public and created a widespread demand for **"Brown's Iron Bitters."**

The question here to be decided, nakedly stated is (**1**) whether the appellant has such right and title that it can be protected in the use of the designation **"Brown's Iron Bitters;"** and (**2**) whether, if it can, the use by the appellees of the designation **"Brown's Iron Tonic"** will be enjoined.

The opinion in No. 101 of the present term is decisive of this point.

1. As to appellant's title. It is undoubtedly true that the appellant has not an exclusive right to use any one of the three words which constitute the name of its article. The patronymic is specifically *publici juris*, and the same is true of the words "*iron*" and "*bitters.*" The patronymic is a proper name; "iron" and "bitters" are common words of description. There are many thousands of persons in the United States who have, in the abstract, an indisputable right to use each of the three words of which our designation is composed.

If an exclusive right is necessary to maintain our suit, we must fail on the face of our bill of complaint. But we respectfully submit that it is not necessary for us to show an exclusive right. We advance this proposition with some degree of diffidence, in view of the fact that there appears to be a sharply-defined conflict of opinion.

Mr. Justice BRADLEY writes as follows in a recent case :

> " In our view, if a person seeks to restrain others from using the particular trade-mark, trade-name or style of goods, he must show that he has an exclusive ownership or property therein " (44 Fed. Rep., 279).

Accordingly, the Court declined to protect the designation " Rosendale Cement," at the suit of a manufacturer of Rosendale, notwithstanding that the defendant used that name in connection with a cement made in Lehigh Valley, and in connection with which the designation " Rosendale " could not be truthfully applied.

The material question here presented for decision is whether the distinction between (1) CASES INVOLVING TECHNICAL TRADE-MARKS and (2) CASES INVOLVING UNFAIR COMPETITION IN BUSINESS is well founded. In the former class of cases an exclusive right is essential; in the latter (it has been by many understood) it is not.

The difference between these two classes of cases has been emphasized by the Court of Appeals of New York (Koehler vs. Sanders, 29 N. E. Rep., 235, and cases cited), by the Supreme Court of Pennsylvania (Laughman's Appeal, 129 Pa. St., 1), by the Court of Appeals of Kentucky (Avery vs. Meikle, 81 Ky., 73), by the Supreme Court of California (Pierce vs. Guittard, 8 Pac. Rep., 647), by the Supreme Judicial Court of Massachusetts (Chadwick vs. Covell, 23 N. E. Rep.,

1069) and by the text writers (Browne on Trade-marks, Secs. 43, 538).

In this Court the language of Mr. Justice STRONG in *Canal Co. vs. Clark*, 13 Wall., 311, touching *Newman vs. Alvord* (the "Akron Cement" case), *Brooklyn White Lead Company vs. Masury*, 25 Barb., 416, seems to differentiate cases of fraud from those which depend on an exclusive right.

The Court say, in *McLean vs. Fleming*, 96 U. S., 254:

> "Nor is it necessary to give a right to an injunction that a specific trade-mark should be infringed. But it is sufficient that the Court is satisfied that there was an intent on the part of the respondent to palm off his goods as the goods of the complainant, and that he persists in so doing after being requested to desist" (*Wollam vs. Ratcliff*, 1 Hem. & M., 259).

> "Chancery protects trade-marks upon the ground that a party shall not be permitted to sell his own goods as the goods of another; and, therefore, he will not be allowed to use the names, marks, letters or other indiciæ of another by which he may pass off his own goods to purchasers as the manufacture of another" (*Croft vs. Day*, 7 Beav., 84; *Perry vs. Truefitt*, 6 *Id.*, 66; *Newman vs. Alvord*, 51 N. Y., 192.

And say the Court in *Goodyear Co. vs. Goodyear Rubber Co.*, 128 U. S., 604:

> "The designation Goodyear Rubber Company

not being subject to exclusive appropriation * * * must be alike free to all.

"The case at bar cannot be sustained as one TO RESTRAIN UNFAIR TRADE," citing

McLean vs. Fleming, 96 U. S., 245.
Sawyer vs. Horn, 1 Fed. Rep., 24.

Mr. Justice BLATCHFORD, in Hostetter vs. Adams, 10 Fed. Rep., 842, cites, with approval, among other cases:

Frese vs. Bachof, 14 Blatch., 432.
Sawyer vs. Horn, Cox's Manual, Case 667.
Mitchell vs. Henry, 43 L. T. R., N. S., 186.
Morgan's Sons Co. vs. Troxwell, 23 Hun, 632.

In the last-mentioned case the Court say:

"The law of trade-marks has been gradually expanding so as to meet just such cases. The courts, in a long and unbroken line of decisions, have endeavored to uphold and enforce commercial morality, and have afforded their protection to honest enterprise and skill. It will not be necessary to go over these cases. They have, in fact, become too numerous for extended analysis. * * * It will be sufficient to state the general result—so far as may be applicable to the case at bar. We deem it, then, to be well settled upon authority that to justify the interference by injunction of a court of equity it is sufficient that there is a fraudulent intention of palming off the defendant's goods as those of the plaintiff's, and that such intention is being carried into execution."

In Glen Cove Co. vs. Ludeling, 22 Fed. Rep., 823, it was said:

> "Granting that the word and pictureof the defendant are different from those of the complainant, a court of equity would enjoin the defendant from using them with such accessories as would lead purchasers to confound the one with the other, not because of the infringement of complainant's trademark, but because the defendant would not be allowed by any deceitful practice to impose upon the public to the prejudice and injury of the complainant."

And in the same Court in another case:

> "It is unnecessary for present purposes to consider whether the complainant has a valid trademark or can have a technical trade-mark in the name 'St. Louis.' It is sufficient that it was lawful for the complainant to use that name to designate its property; that by doing so it has acquired a trade which is valuable to it, and that the defendant's acts are fraudulent and create a dishonest competition detrimental to the complainant" (Anheuser-Busch Brewing Association vs. Piza, 24 Fed. Rep., 149).

> "The books are full of cases," says Judge LOWELL, "in which defendants have been restrained from using their own names in a way to appropriate the good-will of the business established by others of that name.

It is further argued that the Rogerses are so many that the Court cannot find an intent to

appropriate the reputation of one of them more than another; and that, if any suit will lie, it must be by all those who use any trade-mark whose distinctive feature is the name of Rogers.

I believe it to be true that the Greenfield Rogerses did not inquire, nor did the defendants care whose reputation they were making available; but *I am of opinion that any one of those who rightly uses the name may enjoin its interfering use by others*" (11 Fed. Rep., 500).

To the same purpose are:

Sawyer Blue Co. vs. Hubbard, 32 Fed. Rep., 388.
Evans vs. Von Laer, *Ib.*, 153.
Moxie Co. vs. Beach, 33 *Ib.*, 249.
Pike Co. vs. Cleveland, 35 *Ib.*, 898.
Carbolic Soap Co. vs. Thompson, 25 Fed. Rep., 629.
McCann vs. Anthony, American Trade-mark Cases (P. & S.), 1054.
Landreth vs. Landreth, 22 Fed. Rep., 41.
Cook vs. Starkweather, 13 App. Prac., N. S., 392.
Pratt's Appeal, 117 Penn St., 401.
Carson vs. Ury, 39 Fed. Rep., 779.
So. White Lead Co. vs. Coit, *Ibid.*, 492.
Newman vs. Alvord, 51 N. Y., 189.
Blackwell vs. Armistead, 10 O. G., 603.
Brooklyn White Lead Co. vs. Masury, 23 Barb., 416.
Blackwell vs. Dibrell, 3 Hughes, C. Ct., 151.
Morgan's Sons Co. vs. Schwackhofer, 5 Abb. N. C., 265.

To the foregoing might be added other cases which look in the same direction.

The doctrine is thus stated by the Supreme Judicial Court of Massachusetts:

"When the common law developed the doctrine

of trade-marks and trade-names it was not creating a property in advertisements more absolute than it would have allowed the author of 'Paradise Lost,' but the meaning was to prevent one man from palming off his goods as another's; from GETTING ANOTHER'S BUSINESS or injuring his reputation by UNFAIR MEANS, and perhaps from defrauding the public (Chadwick vs. Covell, 23 N. E. Rep., 1069)."

And is thus stated in the latest case in the Court of Appeals of New York:

"And there are cases where the right to use a name to designate a product is so qualifiedly exclusive that the right to the protection of its use against infringement by others rests upon the ground that such use by them is an untrue deceptive representation. This may be applicable to a geographical name designating a locality or district, and which has been adopted by one as a trade-mark and afterwards deceptively used by another upon similar articles (Newman vs. Alvord, 51 N. Y., 189; Laughman's Appeal, 128 Pa. St. I., 18 Atl. Rep., 415; Canal Co. vs. Clark, 13 Wall., 311). *The application of this principle is not necessarily dependent upon a proprietary right in a name or the exclusive right to its use; but when another resorts to the use of it fraudulently as an artifice or contrivance to represent his goods or his business as that of the person so previously using it, and to induce the public to so believe, the Court may, as against him, afford relief to the party injured*" (Berry vs. Armistead, 2 Keen, 221; Lee

vs. Haley, L. R., 5 Ch. App., 155; Jay vs. Ladler, 40 Ch. Div., 649; Meneely vs. Meneely, 62 N. Y., 427). Koehler vs. Sanders, 25 N. E. Rep., 235.

If it be true that the foregoing cases establish that it was not necessary for the complainant to show "exclusive ownership" to maintain a suit to prevent "unfair trade," it is respectfully submitted that the appellant's title to maintain its suit is well founded.

But there has been, in effect, a specific adjudication in a case in which the appellant was complainant, and in which Mr. Justice BROWN granted an injunction, resting his decision in part upon a rule laid down by the House of Lords.

Brown Chemical Co. vs. Stearns was a suit instituted by this appellant against Stearns, who had used the designation "Brown & Co." on his goods. Judge BROWN said:

> "While this explanation [the existence of a custom of the trade] relieves the defendant from the charge of a fraudulent design on his part, and there is no evidence that any one was ever actually deceived by this label, or thereby induced to buy defendant's preparation under the belief that it was plaintiff's, one can easily imagine that the effect of it might be to mislead intending purchasers and perhaps induce them to think they were buying Brown's Iron Bitters. Indeed, the evidence of Powell in this case indicates that the Hamburg druggists endeavored to palm off the

> package upon him as manufactured by the plaintiff. To such efforts, whether innocent or not, the defendant has no right to lend itself. We believe the rule stated by Lord WATSON in Johnston vs. Ewing, L. R., 7 App. Cas., 219, 232, to be a wholesome one: 'But no man, however honest his personal intentions, has a right to adopt and use so much of his rival's established trade-mark as will enable any dishonest trader into whose hands his own goods may come to sell them as the goods of his rival.'"
>
> *Brown Chemical Co. vs. Stearns & Co., 37 Fed. Rep., p. 363.*

If this is not sound law, we have no case.

It is plain that the thought which is illustrated in the cases which have been cited is the result of genuine causes. "Fair competition in business is legitimate and promotes the public good, but an unfair appropriation of another's business by using his name or trade mark, or any imitation thereof calculated to deceive the public, or in any other way, is justly punishable by damages, and will be enjoined by a court of equity."

To prevent one man "from getting another's business or injuring his reputation by unfair means," this doctrine of unfair competition was evolved. The man without reputation discovered that he could simulate the goods of his successful competitor without crossing the lines of the criminal law, and without making use of anything which could be regarded as a trade-mark. He saw that by simulating the general appearance of the successful article he could sail between the Scylla and Charybdis of the situation. To close this avenue

of escape, the rule as it is applied in many of the States was evolved. It was a natural and necessary result of the conditions which created it.

We submit that it must be reasoned that where it appears that a party is in the possession and enjoyment of the good-will of a lawful business a court of equity will protect that business against any and every kind of fraud. In this instance we have no exclusive right, in the abstract, to the designation "Brown's Iron Bitters," but we took that name in good faith, and have spent over a million dollars in giving it place and reputation. We have no right as against others in the trade whose names are the same as ours to prevent them from using their names, nor have we any right to complain if they manufacture iron bitters.

"Brown Brothers & Co." is a firm name which has been respected for many years. Is it a conceivable proposition that the use of the name "Brown Brothers & Co." by persons of a different patronimic would not be enjoined? There would be no exclusive right to the use of the name "Brown Brothers & Co.," but there would be an unfair competition in business.

And may we not safely go one step further, and ask whether, if these appellants went into the banking business and called themselves "Brown Brothers & Co." (which, with great respect would be "truly descriptive" in the sense of the Court below), would not an injunction be issued almost as a matter of course? The reason why the wrongdoing would be stayed would be because it would constitute unfair competition in business. This is not the doctrine of the period of Lord HARDWICKE, but of a later and better period.

We respectfully submit that a broad and wholesome rule of inestimable importance to the upright and successful manufacturer has, during the latter half of the present century, been established, and that it ought to be made firmer and surer by this exalted Court.

2. Appellant's right to an injunction was denied by the Court below, chiefly on the ground that the appellee's article differed in appearance from appellant's, for which reason, it was said, there was no probability of mistake, and no injury to the appellant. The Court below also found, in effect, that there was no evidence of fraudulent intent.

If it be true that appellant is entitled to be protected in the designation "Brown's Iron Bitters," the question of intent is of secondary importance. We submit, however, that the facts establish that the designation "Brown's Iron Tonic" was selected *malo animo*. The evidence, we think, shows conclusively that those in privity with the appellees saw our successful article on the market, and prepared to put in circulation their simulated name for the express purpose of diverting to themselves the business which we had established and were constantly increasing.

We consider very briefly the evidences of the fraudulent intent. Exactly what the originators of "Brown's Iron Tonic" had in their minds may be disclosed by the spurious tacking-cards. The object was simply to have "Brown's Iron Tonic" share the results of the popularization of "Brown's Iron Bitters." The intent is deducible from proof of a knowledge of the existence and reputation of our article, and the simulation of the

catch-words, &c., used upon our label; the simulation of our name; the sale of Brown's Iron Tonic at a price much lower than Brown's Iron Bitters; and, finally, the counterfeited tacking-card.

The appellees, by their witnesses, very strongly intimate, if they do not say, that their article was originated by Brown before he had seen appellant's article. But it always happens in these cases that the guilt or innocence of a defendant may be demonstrated by an examination of his article. It is impossible in this instance to compare the two articles without being satisfied that the appellees' label was taken from appellant's. The principal parts of complainant's bottle label are as follows:

> "BROWN'S IRON BITTERS," followed by descriptive matter.
>
> "A DOSE FOR AN ADULT, A TABLESPOONFUL IN A WINE-GLASS FULL OF WATER AFTER MEALS." "CHILDREN IN PROPORTION."
>
> "PREPARED ONLY BY THE BROWN CHEMICAL COMPANY."

The principal parts of the defendants' bottle label are as follows:

> "BROWN'S IRON TONIC," followed by descriptive matter.
>
> "ADULT DOSE, A TABLESPOONFUL IN A WINE-GLASS FULL OF WATER AFTER MEALS. CHILDREN IN PROPORTION TO AGE."
>
> "PREPARED ONLY BY LINCOLN & BROWN."

These are the principal parts of the labels that the parties used upon their bottles.

Upon the back panel of the complainant's article and in a position calculated to attract attention, a label is used, which consists in part of the following:

> "A TABLESPOONFUL AFTER MEALS WILL REMOVE ALL DYSPEPTIC SYMPTOMS, SUCH AS HEARTBURN, * * * ETC."

The following is found displayed upon the defendant's package:

> "A TABLESPOONFUL OF THE IRON TONIC TAKEN IMMEDIATELY AFTER MEALS REMOVES ALL UNPLEASANT SYMPTOMS ARISING FROM DYSPEPSIA, SUCH AS HEARTBURN, * * * ETC."

Upon complainant's label we read:

> "BROWN'S IRON BITTERS ENRICHES THL BLOOD."

Upon defendants' wrapper we read:

> "IRON TONIC ENRICHES THE BLOOD."

On complainant's article it is said:

> "STRENGTHENS THE MUSCLES AND GIVES NEW LIFE TO THE NERVES."

Defendants' wrapper represents that:

> "IRON TONIC STRENGTHENS THE MUSCLES, TONES THE NERVES."

Upon complainant's wrapper we read :

"THE BEST OF ALL."

On defendants' we read :

"IT IS THE VERY BEST OF ALL TONICS."

On complainant's wrapper we read :

"IT IS THE ONLY EFFICIENT PREPARATION OF IRON THAT DOES NOT BLACKEN THE TEETH."

On defendant's, conspicuously displayed, we read :

"BROWN'S IRON TONIC DOES NOT BLACKEN THE TEETH."

Upon complainant's article we read of the effect of one dose, but it is said more is required to

"FULLY ERADICATE THE DISEASE."

Defendants say of their Iron Tonic :

"ITS CONTINUED USE ENTIRELY ERADICATES THE DISEASE."

On the panel of complainant's wrapper, to the right of the front panel, are recited what Iron Bitters will do. On the corresponding panel of defendants' wrapper are recited some of the things which Iron Tonic will do. Compainant begins by saying :

"BROWN'S IRON BITTERS WILL CORRECT INDIGESTION."

Defendants place in a conspicuous place:

"IRON TONIC CORRECTS INDIGESTION."

Says complainant:

"BROWN'S IRON BITTERS WILL CURE DYSPEPSIA."

Says defendants:

"IRON TONIC CURES DYSPEPSIA."

These similarities could not have been the result of accident. They demonstrate that the mind which formulated appellees' label was guided by appellant's label; in other words, there can be no doubt that the defendants had a knowledge of appellant's article, and constructed their wrapper and selected their name with complainant's article in mind. This is the first essential element of fraud, and it looks in the direction of a competition such as might naturally culminate in the counterfeit tacking-card (p. 42½).

The label thus shown to have been made from that used by complainant was devised by Lincoln & Co. in April, 1882. Prior to that time, as early as October of the preceding year, appellant had, by means of large posters, snipes, books, signs, &c., published and advertised its article extensively in Little Rock, Louisville, Texarkana, Fort Smith, Hot Springs and other places (45), all at the door and under the eyes of Lincoln and Brown. There is no doubt that they saw these signs, reading "Brown's Iron Bitters," and that they adopted the simulated name with a full knowledge of its resemblance to that which was in use.

By reference to the specimens of complainant's card and Lincoln's card, opposite page 28 of the Record, it will be seen that Lincoln & Co. made use of a studied imitation of one of appellant's most important indicia. Appellant's treasurer, Mr. Powell, says:

> "This card or snipe has always been of the same color and the words arranged in the same way, the words 'Iron Bitters,' and indeed all the other words, having remained unchanged from the first. This arrangement of words and letters, with the exception of 'Physicians recommend it,' was also used in our newspaper advertisements and on the sides of our boxes. *Our object was to create a trade-mark in this particular style and arrangement, so that when anybody saw it they would be reminded of our article*" (p. 25).

In another connection he says:

"*Hundreds of thousands* of cards or snipes like this have been posted and tacked up in great numbers in all parts of the United States." It was obviously, to all intents and purposes, a sign which symbolized and suggested appellant's article, and was, as such, its property. The late Mr. Justice MILLER said in a recent case:

> "I am not clear but what there may be a right of action growing out of the alleged fact that the defendants have appropriated the device of an open book, which device the complainants have hitherto been in the habit of using ON THEIR ADVERTISEMENTS, CIRCULARS, LETTER-HEADS, &c. This device of the open book, as

we understand it, is also used by the defendants on their letter-heads, circulars, &c. That device so appropriated by defendants may not be a trade-mark, but I can see no good reason—no honest reason—why the defendants should use the same mark or device on their letter-heads, advertisements and circulars which the complainants are using" (43 Fed. Rep., 450).

The appellees' tacking-card is a counterfeit which carries on its face a bald confession of guilt, and the manner in which it was used leaves no room for difference of opinion. One of appellant's witnesses says that he posted the City of Little Rock with appellant's posters, and upon returning after an absence of a few weeks found that the city had been posted with appellees' posters (39). In one instance the Lincoln posters had been placed so as to form a frame around a large poster which the witness had previously put up. He estimated that 5,000 of the Lincoln posters had been used in the City of Little Rock. It also appears by the testimony of a bill-poster that the cities of Pine Bluff, Van Buren and Fort Smith were also posted with similar cards, which came from "Dr. Lincoln's" store, and were used by his direction (184).

It also appears that the counterfeit cards were of a suitable size to be placed in the boxes containing the defendant's article. Lincoln says:

"I told them to get a size so as to lay in my box (118).

189 Q. What do you mean by putting in boxes?

A. Well, we would put up a dozen (bottles of

medicine) in a box, and put two or three posters in the top so that parties could post them up to show what we had to sell" (119).

In another connection he is asked:

"When did you stop using them?

A. About the first of January, 1887; it was nearly a year after the bill of complaint was filed" (10½).

We submit that nothing can be said in favor of appellees' tacking card. It is a plain infringement of appellant's rights which should be enjoined. The fact that its use has been discontinued does not stand in the way of an issuance of an injunction.

Millington vs. Fox, 3 Myl. & Cr., 338.
Leather Cloth Co. Case, 11 H. L. Cas., 523.

In the last-mentioned case it was said:

"If the defendant adopts a mark in ignorance of the plaintiff's exclusive right to it, and without knowing that the symbols or words so adopted and used are current as a trade-mark in the market, his act, though innocently done, will be a sufficient ground for the interference of the Court, as is plain from the decision of Lord COTTENHAM in the case of Millington vs. Fox, to which I entirely assent, and from whom the learned Vice-Chancellor's own opinion in the case of Welch vs. Knott, 4 Kay & J., 747, 751."

It is true that it does not appear that the appellees actually used the simulated card, but there is no attempt

to controvert the charge, and the case has been treated as one against Lincoln. The use of the spurious card cannot be separated from the business of selling "Brown's Iron Tonic," of which it forms a part and in which the appellees were engaged.

The Court below found that "Brown's Iron Tonic" did not enter the market extensively until the spring of 1882, at which time complainant had spent many thousand dollars in advertising "Brown's Iron Bitters," and the article was in great demand.

We respectfully submit that this finding is not entirely accurate. Dr. Lincoln testifies as follows:

> "22 Q. State what steps you took to introduce it to the public?
>
> A. We advertised it in our papers later on, and we put it in our price-lists, and we commenced pushing it considerably and sold a good deal of it. In the first place we had sold but little, the price being too high. We held the price at eight dollars, and *it was not advertised* and *didn't go very well in the spring*, but in the summer or *the next spring* we put the price at six dollars.
>
> 23 Q. What year was that?
>
> A. 1882; and it sold better. We didn't advertise it very extensively at any time, not much UNTIL 1883. We advertised it more in 1883, '84 and '85.
>
> 24 Q. How did you advertise it?
>
> A. We advertised it by circulars and price-lists and newspaper advertising" (99).

It thus appears that "Brown's Iron Tonic" was given

a name and a few packages of it sold at $8 in 1882, at which price it was not accepted. That thereafter the price was *reduced to $6*, and, subsequently, during the years 1883, '84 and '85, it was advertised and a demand created.

At this time Lincoln says that:

> "We made Brown's Iron Tonic; the only proprietary preparation of iron that we made. We made a great many preparations of iron, but ONLY ONE THAT WE CALLED PROPRIETARY MEDICINE, WHICH IS DIFFERENT FROM THE REGULAR ROUTINE MEDICINES.
>
> "Q. Brown's Iron Tonic?
>
> "A. That was the only proprietary iron preparation we made" (98).

Thus they tried the simulated name in a tentative way, and in 1883, after complainant has established the reputation of its article, and after "Brown's Iron Bitters" has been placed before the eyes of many thousands of people, they reduce the price of the article bearing the simulated name so that it is much cheaper than that with which it competes.

The campain of wrongdoing may be said to have culminated in the tacking card (p. 42½), which seems to have been a most effectual expedient. Speaking of the period when it was in use Lincoln says:

> "DURING THE PAST TWELVE MONTHS THE SALE OF IT (BROWN'S IRON TONIC) HAS BEEN MARVELLOUS" (129).

We submit that on these facts it must be reasoned that the acts of Lincoln and Brown were fraudulent.

The question of infringement in every trade-mark case must depend upon the circumstances of the case (see observations of Mr. Justice GRAY, Gilman vs. Hunniwell, 122 Mass., 139). In the present instance the infringement of the appellant's rights has no relation whatever to the appearance of its article. To the eye, the two articles as they are sold are essentially unlike each other. Any one familiar with the appearance of appellant's article could not possibly be misled upon seeing appellees', but that fact is immaterial as affecting the theory of our case.

It may be said that the consumers of an article in general use may be divided into two classes: (1) those who have made the acquaintance of the article and (2) those who have not.

The first class, those who have seen it and know how it looks, rely in making purchases upon their knowledge of the appearance of the article. Their minds are instructed through their eyes; they see and recognize the thing which they are seeking and are governed accordingly. The present case has no connection whatever with this class of customers.

The second class are those who have not seen the article, and who have no knowledge of the appearance of that which they are seeking to obtain.

The theory of all advertising, the painting of the word "Brown's Iron Bitters" on fences and rocks, barns and buildings, is that the existing demand may be increased by creating new customers. The idea is to make known "Brown's Iron Bitters" to persons who have no knowledge of it. The appeal is chiefly to those who have never seen the article, and who go with

the words in their mouths without any knowledge as to the appearance of what they are to receive.

From the ranks of those who have never seen the article the appellant obtains its recruits. The injury here has relation to this class.

As signs painted on fences, and the like.

"Brown's Iron Bitters" and

"Brown's Iron Tonic"

are substantially alike.

The person observing them does not see the article, nor does he acquire a distinct recollection of the final word. "*Bitters*" and "*Tonic*" mean the same thing (49). The average person, seeing the name "Brown's Iron Bitters," is likely to remember "*Brown's Iron*," but is not likely to remember "Bitters." The class whom such a person represents is by a sign sent to the dealer, and the designation "Brown's Iron Tonic" FITS THE CONCEPT HE RETAINS just as well as the true name. It is this class of prospective customers that is diverted by the use of the simulated name.

The appellant, we submit, is entitled to be protected against this danger of loss and injury. The rule is accurately stated by the House of Lords as follows:

> "If one man will use a name, the use of which has been validly appropriated by another, he ought to use it under such circumstances, and with sufficient precautions that the reasonable probability of error will be avoided notwithstanding the want of care and caution which is so commonly exhibited in the course of human affairs. I do not

> say that the mere possibility of deception should suffice to make an appropriation improper, but the chance of misleading should be jealously estimated with a view to this consideration, even though ordinary attention might have been enough to protect him from mistake" (Singer Co. vs. Wilson, 3 App. Cases, 376).

There is no doubt that every man has a right to use his own name; and it is equally true that the manner of its use will be controlled. The principle is illustrated in the case of Russia Cement Co. vs. Le Page, 17 N. E. Rep., 304, very recently decided by the Supreme Judicial Court of Massachusetts. In that case one Le Page had sold the right to use the designation "Le Page's Liquid Glue" in connection with the business which he had established. He started a new business and used the designation "Le Page's Liquid Glue." In answer to the suit which was commenced against him, he contended that he had a right to use his own name, and to use it without let or hinderance. The case was ably argued, and perhaps all the important authorities were cited. After examining the facts and authorities the Court said:

> "We are of opinion, therefore, that the defendant should be enjoined FROM USING THE WORDS 'LE PAGE'S LIQUID GLUE' TO DESCRIBE THE ARTICLE MANUFACTURED BY HIM. * * * In order to avoid misunderstanding, we add that, while the defendant cannot use the words adopted as a trade name for the article manufactured by him, we do not decide

> that he may not use the words 'Liquid Glue,' or other appropriate words to describe his product, or to state in that connection that he is himself the manufacturer of it."

In the present instance Eugene L. Brown unquestionably has the right to use his own name, but he should not be permitted to use it so that it will seem to be, by reason of THE MANNER OF ITS USE, the name of the appellant.

The fact that the evidence of actual mistake and loss of custom may not be abundant is immaterial. The nature of the case is such that the fact of misapprehension could not be established. The rule in this regard is stated in the very recent case of Taendsticksfabriks Aktiebolaget Vulcan vs. Myers:

> "When the evidence is such as to present the question whether the resemblance of the one symbol or trade-mark to the other is such as will probably deceive purchasers, then it is not necessary that further proof should be added that purchasers have in fact been deceived by the defendants' simulation. The facts required to maintain an action to enjoin the infringement of a trademark were fully examined and discussed in Manufacturing Co. vs. Trainer, 101 U. S., 51, and among the points accepted by the Court is the conclusion that it "is not necessary to show that any one has in fact been deceived if the imitation is such as to prove that it is calculated to deceive ordinary purchasers using ordinary caution'" (*Id.*, 63).

"If the false is only colorably different from the true, if the resemblance is such as to deceive a purchaser of ordinary caution, or if it is calculated to deceive THE CARELESS AND UNWARY, and thus to injure the sale of the goods of the proprietor of the trade-mark, the injured party is entitled to relief." *Id.*, 578. And it may be added that the action will not necessarily be defeated by such points of difference as will be observable by placing the labels or trade-marks side by side. * * * And these principles have the approval and support of many other authorities (Munroe vs. Beadle, 8 N. Y. Supp., 414; Tobacco Co. vs. Maller, 6 N. Y. Supp., 389). And it is not in the least impaired or undermined, by what was decided Morgan's Sons vs. Troxwell, 89 N. Y., 292, where the attributes of resemblance were too slight to produce the deception of even THE 'UNWARY'" (11 N. Y. Supp., 665).

This is a suit in effect against *Lincoln and not against Brown*. But if it were against Brown, the appellant would be entitled to the full measure of its rights. It would not be entitled to more than is suggested in the case of Russia Cement Co. vs. Le Page, *supra*, but it would be entitled to require Brown to make use of his whole name or of a combination of words which would be more likely *to prevent* than *to promote* the probability of mistake.

Second Assignment of Error.

The Court below erred because it decided, in effect, that the use by Lincoln & Co. of Brown's name after Brown's retirement from the firm of Lincoln & Co., of which he had been a member, was lawful.

The appellees are merchants who bought the goods complained of in the open market, but the real defendant was one C. J. Lincoln. The article sold as "Brown's Iron Tonic" was made according to an ordinary druggist's prescription, which was given to one Eugene L. Brown, in 1881 (fol. 29), who was at that time a member of the firm of C. J. Lincoln & Co. The firm of Lincoln & Co. was dissolved December 10, 1883 (97), when Brown withdrew, and in the following month became a member of another firm doing a similar business as Mansfield & Co. (69). From December, 1883, until the filing of the bill, "Brown's Iron Tonic" was manufactured by Lincoln (104), no one of the name of Brown having any interest in or connection with it.

"Since December, 1883," Brown says, "I have not had any interest in 'Brown's Iron Tonic'" (80).

We submit that, on these facts, the appellees cannot justify the use of the word "Brown's" on the ground that it is the name of a person connected with the manufacture or sale of the article.

One of two positions the appellees must elect to take. They must say either that the name "Brown's" was applied in a personal sense to mean E. L. Brown's Iron Tonic or that it was not. Whichever horn they elect

compels the conclusion that their use of the name was not lawful.

If they say it was applied in a personal sense, they admit that it could not be lawfully used after Brown ceased to have anything to do with the business of making or selling the medicine.

If they say it was used in an impersonal sense, they admit that its selection and use were fraudulent *ab initio*.

If the name "Brown's" has a personal significance Lincoln could not acquire the right to use it.

It appears that the word "Brown's" was applied to signify and denote Eugene L. Brown alone. One Shelley was called as a witness, who said that he was a pharmacist by occupation (83), and that in 1882 he was in the employ of Lincoln & Co., at which time he wrote out the formula of "Brown's Iron Tonic." The following is from his deposition:

> "Q. State whether or not you know anything of a medicinal preparation called 'Brown's Iron Tonic?'
>
> A. Yes; I originated the formula.
>
> Q. When and at whose instance?
>
> A. At the instance of Mr. Eugene L. Brown.
>
> * * *
>
> Q. If you know, state why the preparation was called 'Brown's Iron Tonic?'
>
> A. To distinguish it from other articles, and because Mr. Brown originated it. He was the one that proposed it, and it was named as a compliment to Mr. Brown."

Brown says in explanation of the selection of the

name that he was favorably known in the southwest; that he had numerous customers, and that to show that the remedy was his article he made use of his own name to describe it (71).

"Mr. Brown," Lincoln writes, "traveled thirteen years in this State and is well known throughout the State, and for that reason we have used his name" (95).

In another connection Lincoln says:

> "251 x-Q. Lincoln is a good name and you are the head of the firm; why didn't you put it (the medicine) in your own name?
>
> A. Because he (Brown) started to put up patent medicines under his name and he proposed to increase them, and he would have made a long list of them, but I bought him out.
>
> 252 x-Q. What patent medicines were started in his name?
>
> A. Brown's Iron Tonic, and Hair Dye and Ginger. Well, I kept the ginger in my own name—the firm name. As to the ginger, we never made it specially in Brown's name; but we put up carbolic salve and horse and cattle remedies.
>
> 253 x-Q. What do you mean by saying he put them up?
>
> A. He brought a man with him from Louisville to act as compounder or chemist, as he calls him—M. B. Shelley—and he did the manufacturing through Brown's instructions.
>
> 254 x-Q. But he was in your employ as much as Brown's?
>
> A. Yes; but more particularly under his con-

trol, because he looked after that department and I looked after the drugs. He talked about making these preparations before he went into the business, and had his heart set on making them and a half-dozen others, and would have made them only I was afraid it wouldn't pay, and I have always opposed patent medicines as requiring too much money, and because I had my hands full of too much other business. The patent business is good by itself, I presume, and he insisted on putting his name on it, too. * * *

259 x-Q. What other preparations have you got with his name on at present?

A. Not any; we are not making anything in that line now with his name except "Brown's Iron Tonic" (128).

E. L. Brown testifies as follows:

"Q. State fully the reasons and purposes prompting you and C. J. Lincoln & Co. to adopt for your preparation the name 'Brown's Iron Tonic,' together with its wrappers, cartoons and packages?

A. Because I was well and, as I thought, favorably known throughout Arkansas; and also because I was the originator of the preparation.

Q. Was it to distinguish it as your own?

A. It was to distinguish it as my preparation of iron" (72).

There is much more testimony to the same effect all tending to support the obvious conclusion that

"Brown's" meant "Brown's" as distinguished from "Lincoln's," or "Lincoln & Co.'s."

In other words, Brown had the control of the manufacture of the tonic; it was in the strictest sense E. L. Brown's manufacture, in the production of which his mind and skill alone were exercised. It was his product and not Lincoln's product; and for that reason they called it "BROWN'S Iron" and not "LINCOLN & Co.'s Iron." It follows that when Brown's connection with it ceased, it was no longer "Brown's," and the use of his name was unlawful.

The rule of this Court concerning the transfer of trade-marks is well understood. It was held, in *Kidd vs. Johnson* (100 U. S., 617,) that:

> "When the trade-mark is affixed to articles manufactured at a particular establishment AND ACQUIRES A SPECIAL REPUTATION IN CONNECTION WITH THE PLACE OF MANUFACTURE, AND THAT ESTABLISHMENT IS TRANSFERRED, either by contract or operation of law, to others, the right to the use of the trade-mark may be lawfully transferred with it."

It appeared in that case that the trade-mark had been used continuously for a great number of years in connection with goods made at a particular establishment, and that its distinctive personal meaning had necessarily been lost.

The Court rested its decision chiefly upon the Leather Cloth Co.'s case, decided by the House of Lords, in which the following language was used:

> "Suppose a firm of A. B. & Co. to have been

clothiers in Wiltshire for fifty years, and that broad-cloth marked thus 'A. B. & Co., makers, Wilts.,' has obtained a great reputation in the market, and that A. B. & Co., on discontinuing the business, sell and transfer the right to use their name and mark to a firm of C. D. & Co., who are clothiers in Yorkshire, would the latter be protected by a court of equity in their claim to the exclusive right to use the name and mark of A. B. & Co.? I am of opinion that no such protection could be given. 'It is true that the name or style of the firm may *by long usage* become a mere trade-mark, and *cease to convey any representation as to the fact of the person who makes or the place of manufacture;* but where any symbol or label claimed as a trade-mark is so constructed or worded as to make or contain a distinct assertion which is false, I think no property can be claimed in it; or, in other words, the right to the exclusive use of it cannot be protected. The sale of an article stamped with a false statement is *pro tanto* an imposition upon the public; and, therefore, in the case supposed, the plaintiff and the defendant would be both *in pari delicto*, which is consistent with the many decided cases" (11 H. L. Cases, 523).

The distinction is that to avoid the charge of misrepresentation it must appear affirmatively that the name attempted to be protected has by long use been invested with a secondary meaning, so that it means the fruit and product of a particular establishment and not the product of a particular person.

This rule is, we understand, antagonized by nothing contained in the books. Its application is illustrated in the later case of *Manhattan Medicine Co. vs. Wood*, a case in which the complainant's title was very similar to that of the appellees here. The Court said:

> "A court of equity will extend no aid to sustain a claim to a trade-mark of an article which is put forth with a misrepresentation to the public as to the manufacturer of the article, and as to the place where it is manufactured, both of which particulars were originally circumstances to guide the purchaser of the medicine.
>
> It is admitted that whatever value the medicine possesses was given to it by its original manufacturer, Moses Atwood. He lived in Georgetown, Massachusetts. He manufactured the medicine there. He sold it with the designation that it was his preparation, 'Atwood's Vegetable Physical Jaundice Bitters,' and was manufactured there by him. As the medicine was tried and proved to be useful, it was sought for under that designation, and that purchasers might not be misled, it was always accompanied with a label, showing by whom and at what place it was prepared. These statements were deemed important in promoting the use of the article and its sale, or they would not have been continued by the assignees of the original inventor" (108 U. S., 222).

In this instance there was not even the form of a transfer to Lincoln by Brown of the right to use his name. Brown "sold his interest in the store and his

interest in Brown's Iron Tonic" (103). He says: "The firm was dissolved in December, 1883, by my sale to C. J. Lincoln of my interest in the firm, including my right and title to all proprietary articles owned by the firm, including Brown's Iron Tonic" (72). There was merely a dissolution of the partnership; a withdrawal of Brown after A CONNECTION OF ABOUT TWO YEARS, and the relinquishment of his partnership rights.

The case of Menandez vs. Holt, 128 U. S., 522, holds, perhaps, that where there is a withdrawal by a partner from a firm which has existed for many years, there is a relinquishment of the good-will of the business in favor of the partners who continue it. But that case does not consider or touch the question of the transfer of a PERSONAL TRADE-MARK or designation which symbolizes the skill and reputation of A PARTICULAR INDIVIDUAL. The rule is very clearly stated in *Hoxie vs. Janey*, by the Supreme Judicial Court of Massachusetts, as follows:

> "There may be no doubt that there are cases where the personal skill of an artist or artisan may so far enter into the value of the product that a trade-mark bearing his name would, or at least might, imply that his personal work or supervision was employed in the manufacture and in such cases IT WOULD BE A FRAUD UPON THE PUBLIC IF THE TRADE-MARK SHOULD BE USED BY OTHER PERSONS, AND FOR THIS REASON SUCH A TRADE-MARK WOULD BE HELD TO BE UNASSIGNABLE."

The rule, too, is very clearly stated in the case of *Skinner vs. Oakes:*

> "We have given to this case long and anxious attention, and have considered attentively the many decisions bearing upon this subject which we have not thought it necessary to cite. We have done this not only because it involves important rules of property, but also because questions of public right and public policy enter into it, which courts of justice cannot ignore. We are disposed to uphold the assignability of trade-marks * * * as far as authoritative courts have hitherto gone; but we cannot go to the wild length of holding that the name of a man may be segregated from the man himself and from the business in connection with which the man has used it, and erected into an ideal and abstract species of property to be made the subject of traffic and sale in the market from man to man to be used in any manner in which the purchaser may choose to use it. * * * IN SO FAR AS IT (PLAINTIFF'S NAME) REPRESENTS TO THE PUBLIC THE PERSONAL SKILL AND INGENUITY OF THE MAN OAKES, THE RIGHT TO USE IT CANNOT, UNDER ANY CIRCUMSTANCES, BECOME THE PROPERTY OF A PERSON BEARING ANOTHER NAME" (10 Mo. App., 45).

It would seem to be axiomatically plain that, to support an assignment of the right to use a man's name, it must conclusively appear that the name which is

assigned has acquired a secondary meaning by reason of long use.

In this case the evidence shows that the word "Brown's" could not have lost its natural meaning. Brown left the firm in December, 1883 (97). Prior to his withdrawal there had been sold of his remedy only about sixy gross. This very limited sale is a hook too feeble on which to hang the proposition that there had been created a genuine good-will in which Brown's individuality was lost. The only deduction is that up to the time of his withdrawal the sale of his article had been a failure in connection with which his name meant of necessity at the end of the brief period of use exactly what it meant in the beginning.

We respectfully submit that there are no well-considered cases in the books which do not support the conclusion that, at the time of Brown's withdrawal, he could not lawfully assign to Lincoln the right to use his name.

Unquestionably the people who dealt with Brown and purchased "Brown's Iron Tonic," did so, understanding and believing that Brown was somehow connected with its manufacture, and when he withdrew from the firm, the duty was imposed upon Lincoln of making a change in his label. What he did was to take the label which was first used (p. 62) containing no notice of any sort that Brown no longer had to do with the thing which he had originated and sold.

In the report of Stachelberg vs. Ponce, 128 U. S., 689, it is said :

> "By the decree below the bill was dismissed upon the ground that when a right to the use of a

> trade-mark was transferred, either by the act of the original owner or by operation of law, 'the fact of transfer should be stated in connection with its use; otherwise a deception would be practiced upon the public.' " Stachelberg vs. Ponce, 23 Fed. Rep., 430.

The Court did not directly pass upon this point, but it did not, I understand, intimate that the ruling of the Court below was erroneous. If Judge COLT's decision is good law, the appellees in this case cannot justify their use of the name "Brown's," because they have never used it in a lawful manner.

We submit, therefore, that the opinion of the learned Judge below is erroneous. His decision depends upon his finding that:

> "The word 'Brown's,' as employed by Lincoln & Co., TRULY REPRESENTS a person of that name."

We submit that the word "Brown's," as employed by Lincoln & Co., was in fact and in law fictitious and untruthful, and that the case was in every way the same as if Brown had never been connected with the medicine in any way.

If it be true that the appellee, cannot be heard to say that Lincoln & Co. acquired a right to use Brown's name, there should have been an injunction. If there had been no one by the name of Brown connected with the firm of Lincoln & Co., their use of the designation "Brown's Iron Tonic" would have been manifestly unlawful. When Brown withdrew,

the right to make use of his name expired. The article was "*Brown's* Iron" while he compounded and sold it. It became "*Lincoln's* Iron" after Brown retired; and he, Lincoln, compounded and sold it.

The finding below should have been that the word "Brown's," as employed by Lincoln & Co., did not truly represent a person of that name, and that there should, therefore, be an injunction.

The letter of appellant. The learned Judge below refers in his opinion to a letter written by the appellant (33) in which it was said in a friendly spirit that the appellant had no objection to "Brown's Iron Tonic." This letter was written in August, 1882, and during the following November it was canceled by a letter in which the appellant threatened to bring suit. If there was any acquiescence it was immaterial under the decisions of this Court in

McLean vs. Fleming, 96 U. S., 245;
Menandez vs. Holt, 128 U. S., 514;
Amoskeag Manufacturing Co. vs. Spear, 2 Sand. S. C., 599.

We submit, in conclusion, that the use by Lincoln & Co. of the words "Brown's Iron Tonic" should be enjoined for the following reasons:

1. Because the words "BROWN'S IRON" had been appropriated in good faith and constituted the substance of a name to which others had given value.

2. Because the words "BROWN'S IRON" did not disclose the origin of their article and did not indicate by whom it was made or sold.

3. Because, if Lincoln & Co. desired to manufacture an iron preparation, it was their duty to avoid the use of a name which resembled that of another iron preparation which was in the field. Even if their act was, in the abstract, lawful, the law imposed upon them the duty of making their name unlike that which had been appropriated.

4. The addition of the affix "tonic" did not change the signification of the words "Brown's Iron," because *(a)* bitters and tonic are synonymous; *(b)* complainant's article was known as a tonic; *(c)* the word "tonic" would not be likely to be observed; *(d)* if it were observed, it would not serve to identify the article and prevent mistake.

We respectfully submit the decision of the Court below should be reversed.

Respectfully submitted,

ROWLAND COX,

Of Counsel for Appellant.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 226.

THE BROWN CHEMICAL COMPANY,
Appellant,

vs.

CHRISTIAN F. G. MEYER, JOHN F. W. MEYER, FREDERICK G. MEYER, THEODORE F. MEYER, GUSTAVE J. MEYER and EDWARD W. SINCLAIR,
Appellees.

ADDITIONAL BRIEF ON BEHALF OF APPELLANT.

J. J. Reynolds, 148-150 Centre Street, N. Y.

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C. F. G. MEYER ET AL.

Additional Brief on Behalf of the Appellant.

We beg to submit some additional suggestions concerning

The Question of Infringement.

The learned Judge in the Court below declined to follow the rule of Hier vs. Abrahams, 82 N. Y., 519, because that "was purely a case of trade-mark," whereas the case before him was one of "unfair competition in business."

> "The legal proposition involved," it is said, "is whether one manufacturer * * * can be enjoined from using certain words on his wrappers, simply BECAUSE THEY ARE SIMILAR IN SOUND to words which have previously been appropriated by some other manufacturer" (31).

Our understanding is that there is also involved the consideration that the names, as signs, are substantially alike, and that the defendants' name so closely resembles the complainant's that an unscrupulous dealer would be able to use defendants' name so as to injure complainant's business.

But, we suppose, the most important consideration in the mind of the Court below was the difference in the appearance of the two articles.

In the case of Brown Chemical Co. vs. Stearns, complainant's mark was "Brown's Iron Bitters," and defendants' mark "Iron Tonic Bitters." Judge BROWN said:

> "The evidence that the defendant designed to compete with the plaintiff in the sale of iron bitters, and, if possible, to supplant it in the market, is abundant; but the evidence that this was done by any unfair or illegal means, or by an endeavor to induce the public to buy its goods under the impression that they were buying the goods of the plaintiff, is quite inconclusive. * * * Upon the whole, we think the evidence is quite insufficient to show any unlawful competition upon the part of the defendant, or any such imitation of its packages, labels or wrappers as would induce any one to believe he was buying the preparation of the plaintiff" (37 Fed. Rep., 362).

The Court, however, notwithstanding the wide dissimilarity between the packages, enjoined the use upon defendant's packages of THE WORDS "BROWN & CO., New York City."

In Anheuser Busch Brewing Association vs. Piza (24 Fed. Rep., 149), the use of the name "ST. LOUIS" upon defendant's labels was enjoined, notwithstanding that defendant's labels were obviously unlike complainant's in appearance.

In So. White Lead Co. vs. Coit (39 Fed. Rep., 492), the use of the word "ST. LOUIS" upon white lead was restrained, notwithstanding the difference between the collocations of the parties. These cases are, we understand, supported by others.

Newman vs. Alvord, 51 N. Y., 189.
Pike Co. vs. Cleveland, 35 Fed. Rep., 388.
Blackwell vs. Dibrell, 3 Hughes, C. C., 151.

If, in this case, the appellees had made use of the appellant's designation "Brown's Iron Bitters" there would exist the same differences between the packages; there would be no imitation of the appearance of any trade-mark or label of the appellant; there would merely be an imitation of the sound of appellant's name, and of its appearace as a sign.

We think there are numerous adjudications which are decisive of appellant's right to an injunction. The French Courts have frequently considered cases like the present. Some of the decisions are discussed in Browne on Trade-marks, § 420*a*, 437.

In the case of Röederer vs. Röederer it appeared that the defendants were making use of their own names, but the Court directed

> "That the defendants shall hereafter insert in their advertisements, as well as on their marks, labels, &c., first, THE PRENOMEN OF 'THEO-

PILE;' second, the mention following: 'House founded in 1864.'" (*Ib.*, § 438).

In Merridan Britannica Co. vs. Parker, 39 Conn., 450, the plaintiff's trade-mark or stamp was "1847, *Rogers Bros.*, A1." The defendant stamped his goods "C. Rogers Bros., A1," and "C. Rogers & Bros., A1." The plaintiffs asked for an injunction to restrain the use of the word "Rogers" or "Rogers Bros." The Court granted the injunction as to the use of the words "ROGERS BROS.," but refused to prohibit the use of the word "Rogers."

In James vs. James, the plaintiff's, under an assignment from Robert James, sold an ointment known as "Lieut. James' Horse Blister," and the defendant, Robert *Joseph* James, began to sell an ointment under the same name, with the signature "Robert James." He was enjoined FROM OMITTING THE NAME "JOSEPH" from his label (L. R. Eq., 421).

To the same effect are the following cases:

Devlin vs. Devlin, 69 N. Y., 212.
Shaver vs. Shaver, 54 Iowa, 108.
Holmes, Booth & Hayden vs. Holmes, &c., Co., 37 Conn., 278.

The learned Judge in the Court below says, in the words of this Court: "Equity will not enjoin against telling the truth." But will not Equity, above all things, require that "THE WHOLE TRUTH AND NOTHING BUT THE TRUTH" be told? Is not HALF THE TRUTH the very fraud which Equity, among every form of fraud, searches out and condemns?

In this instance, the appellees' article is manufac-

tured by the firm of Lincoln & Co., composed of Lincoln and Brown. The application of the name "Brown" is one, therefore, to some extent arbitrary in its character. It did not, we submit, "*truly* indicate" by whom the goods were made. It is not the whole truth.

If it was meant to be understood as a personal mark, a prenomen, or the initials "E. L.," should have been used.

The injury to the appellant is exactly the same as if the appellees had made use of the designation "Brown's Iron Bitters." It may differ somewhat in extent, but it does not differ in its nature and probable result. We beg to be permitted to suggest the following case, which is obviously illustrative of a vast number :

Suppose a person sees one of the million tacking cards or posters which the appellant has put up in all parts of the United States. He reads, "**Brown's Iron Bitters, Best Tonic**" (p. 28) ; and again, within an hour or on the following day, he reads, "**Brown's Iron Bitters, Best Tonic.**" What he has seen makes only a general impression upon his mind. A week or a month after, he wants to buy an iron remedy or a tonic and goes to a drug store and there sees a handbill which reads "**Brown's Iron Tonic.**" Is it not plain that he would buy "Brown's Iron Tonic," believing that he was getting the article which he had seen advertised? And having once purchased it the presumption is that he would, instead of becoming appellant's customer, become the customer of its competitor?

But if the handbill he saw in the store read

"LINCOLN & BROWN'S IRON TONIC," or if it read "E. L. BROWN'S IRON MEDICINE," or "BROWN'S PREPARATION OF IRON," or "E. L. BROWN'S IRON REMEDY," or "E. L. BROWN'S IRON SPECIFIC," there would be only a fair and reasonable competition. The customer might buy "E. L. Brown's Iron Remedy," but he would not buy it under the supposition that he was getting the thing which the appellant had advertised.

Many millions of dollars have been spent in the United States during the last decade in painting and posting and advertising and publishing the names of proprietary articles. In each instance the object has been TO FAMILIARIZE THE PUBLIC WITH A NAME, whereby the demand for the article is created or increased. What the appellees have constructively done has been to select and construct, *malo animo* and from choice, A NAME SO NEARLY LIKE APPELLANT'S that it was impossible for appellant to reap the fruits and to enjoy the accretions of its efforts.

The case is as if the appellees had said to themselves:

> *"The Brown Chemical Co. is creating a great demand for a tonic containing iron. From Maine to Texas it is publishing from the house-tops the designation 'Brown's Iron Bitters.' The name of one of our firm is 'Brown.' All iron preparations are tonics. We will get up an iron preparation and take the name 'Brown's Iron Tonic,' which will be so nearly like that which is being popularized that we shall GET THE BENEFIT OF THEIR ADVERTISING, AND BE ABLE TO SELL 'BROWN'S IRON TONIC' ACCORDINGLY."*

This, it seems to us, must have been the operation of the minds of Lincoln and Brown when they selected Brown's name. We submit that their act was inequitable, and that it constituted an unfair competition in business, which should be restrained.

The evidence of the five druggists of Little Rock tends strongly to support appellant's argument. One of them says:

> "I have frequent calls for 'Brown's Iron Bitters,' and when I was out out of them tried to sell 'Brown's Iron Tonic,' and ALMOST INVARIABLY FAILED TO DO SO" (168).

Another says:

> "I have heard them (customers) say they DID NOT WANT THE TONIC, BUT WANTED THE BITTERS, and the reverse" (171).

Another one says:

> "Sometimes I ask a man which he wants, and he tells me the bitters or tonic. * * * THE ONLY THING CALCULATED TO DECEIVE IS THE 'BROWN'S IRON.' They are both 'Brown's Iron' preparations" (177).

And another individual says:

> "I HAVE FREQUENTLY TRIED TO SUBSTITUTE THE BITTERS FOR THE TONIC AND FAILED" (180).

This evidence, it seems to us, is a demonstration that there exists in the public mind a confusion and uncertainty by reason of the resemblance of the names.

In the language of the House of Lords, we submit that

> "No man has a right to adopt and use so much of his rival's established trade-mark as will ENABLE ANY DISHONEST TRADER, into whose hands his own goods may come, TO SELL THEM AS THE GOODS OF HIS RIVAL." (7 App. Cas., 219.)

And in the words of Lord Justice Cotton, in the Court of Appeals:

> "It merely comes to this: Is it possible from the use of this label [name] that the defendants [article] MAY BE CALLED OR BE PASSED OFF ON UNWARY OR IGNORANT PURCHASERS" as complainant's article. Read vs. Richardson, 45 L. T. R., N. S., 54.

And we respectfully submit, as has already been suggested, that this case is an important one because its decision will commit the Courts of the United States to one of two views. The decision must necessarily be in favor of a rule which tends to strengthen that which promotes the good of society, or in favor of a discrimination which tends to lower the standard of commercial relations, and thus, it seems to us, to lower the standard of public duty and responsibility.

In the direction of the course of enlightened thought, the highest function of this Court is made of value to the nation and the world.

Respectfully submitted,

ROWLAND COX,

Of Counsel for Appellant.

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THE BROWN CHEMICAL CO.,
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Respondents.

No. 226.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

BRIEF AND ARGUMENT OF

J. E. McKEIGHAN,
Of Counsel for Respondents.

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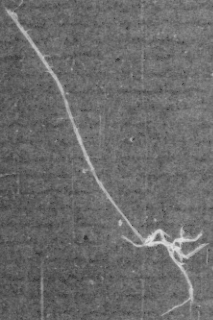

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STATEMENT.

The bill in this case, and the amendments thereto, charges, that in the year 1879, Wm. H. Brown, Alexander E. Brown and Wm. S. Powell constituted a partnership at Baltimore, Maryland, engaged in the wholesale drug business under the name of Brown Chemical Company.

That in April, 1884, the complainant corporation was formed, and the partnership transferred to the complainant

its assets, and among other things its right to manufacture and sell Brown's Iron Bitters.

That prior to July, 1879, said partnership firm manufactured, and sold a preparation (Brown's Iron Bitters) of great value as a remedy for numerous diseases.

That, for the purpose of distinguishing the preparation, said firm devised a certain label consisting of four sides, the front one bearing the representation of a lion's head, above which is printed the word "Brown's." In the mouth of the lion is suspended a rod or bar having depending therefrom a banner or streamer bearing the words "Iron Bitters" printed in large conspicuous letters and separated by a circular design occupying the central field of the banner or flag.

The three remaining sides, it is alleged (and it so appears), have the words "Brown's Iron Bitters," in various places also and embrace other matter.

It is alleged that the said designation, "Brown's Iron Bitters," by the efforts of said partnership and its assignee, said complainant, has, to the exclusion of all others, become associated with said medicine, and is understood to mean said complainant's preparation; that said designation has never been employed with any other preparation, and that by virtue of the premises complainant is entitled to the exclusive use of said (alleged) trade-mark or trade-name, and that even, if it has not the exclusive right to use it, the acts of the defendant complained of are fraudulent, and will be restrained by this court.

The bill charges that at the date of the bill and before, defendants, being cognizant of the complainant's rights, have willfully and fraudulently offered and sold medicine

put up in bottles to which have been attached and applied labels containing the words, "Brown's Iron Tonic," intended to indicate, that the medicine contained in said bottles was the complainant's, and that defendants have fraudulently offered and still offer for sale said "Brown's Iron Tonic" as and for said preparation of complainant.

The bill alleges that it is defendant's purpose to sell the said simulated article called "Brown's Iron Tonic," upon the reputation established by complainant and as and for "Brown's Iron Bitters."

The prayer is for an accounting, and that the defendants be forever enjoined and restrained from in any manner using any mark or marks, label or labels, containing the words, "Brown's Iron Tonic," *in such manner or form as to mislead* and from otherwise selling or offering to sell any *imitation* of complainant's goods.

The complainant attaches to its bill its label, *but does not* attach defendant's.

The answer of defendants admits that the designation, "Brown's Iron Bitters," has come to be associated with complainant's medicine, and that as matter of fact no other "Brown's Iron Bitters" is called for when complainant's medicine is meant. (But does not admit, as stated in complainant's brief, in the court below, that the designation, "Brown's Iron Bitters," is complainant's exclusive property.)

The answer admits that the designation, "Brown's Iron Bitter's," has come to be identified with complainant's medicine, *but not* to the exclusion of all others.

The answer denies that said designation, "Brown's Iron Bitters," is to any intent or purpose the trade-mark of com-

plainant, or that complainant has ever had the exclusive right to said designation, or that the defendants have done anything fraudulent, or which will be restrained by the court.

The answer admits, that the defendants have sold, and are offering for sale a medicine put up in bottles to which have been attached and applied labels containing the words, "Brown's Iron Tonic," but denies that the said bottles or labels have been made to simulate complainant's, or were intended or designed to indicate that the medicine sold as "Brown's Iron Tonic," was the complainant's said preparation.

The answer denies that defendants have ever sold Brown's Iron Tonic as "Brown's Iron Bitters," or that it was the purpose of defendants to offer or sell said "Brown's Iron Tonic" upon any reputation established by complainant for "Brown's Iron Bitters."

The answer further sets up that the said preparation, "Brown's Iron Tonic," is lawfully put upon the market under that name by reason of the facts alleged, viz.: That in the summer of 1881 one E. L. Brown, in connection with C. J. Lincoln, at Little Rock, Arkansas, commenced putting up and selling said preparation designated as "Brown's Iron Tonic" as a wholly distinct preparation from "Brown's Iron Bitters," without any intention or purpose to imitate complainant's preparation. That subsequently said Brown sold his interest in said "Brown's Iron Tonic" and the right to manufacture the same to said Lincoln, who has since that time been manufacturing and putting it up at Little Rock, Arkansas, and offering it to the trade; that the defendants, before March 24, 1886, had

sold four gross bottles and since that time about seven gross bottles.

The answer set up that said "Brown's Iron Tonic" has at all times been put up in cartons and bottles wholly different in size, color, and appearance, from complainant's bottles and with labels adapted and applied to the bottles wholly differing in size, color, appearance and details from complainant's labels, so that the public could not be misled or the complainant injured.

The answer further sets up that early in 1882 the complainant and said Lincoln and Brown entered into a correspondence with respect to said "Brown's Iron Tonic." and sent complainant (or rather the partnership firm as it was then) a sample of their preparation, with wrapper and label, and an explanation of the use of the word "Brown;" that said Brown Chemical Company wrote, after an examination of said sample bottle, the following letter:

BALTIMORE, August 28th, 1882.

Messrs. C. J. Lincoln & Co., Little Rock, Arkansas:

GENTLEMEN—Inclosing your invoice, thank you for your kind and satisfactory letter. We wish the "Brown's Iron Tonic" a success, *as, upon examination, we cannot see where it can conflict with us*, except in the multiplicity of the Brown family.

Your fr'ds,

BROWN CHEMICAL COMPANY.

(The italics are our own.)

The answer sets up, that the complainant made no objection up to the date of bringing of this suit, March,

1886, to the manufacture and sale of said "Brown's Iron Tonic."

The defendants attach to their answer a bottle of complainant's "Brown's Iron Bitters" as sold, and a bottle of "Brown's Iron Tonic."

PROOFS.

The evidence of complainant shows, that the partnership firm of Brown Chemical Company some time in 1880 began the preparation and sale of "Brown's Iron Bitters," and that they have spent a great deal of money advertising it, and that said firm and said complainant, since its organization in April, 1884, as the assignee of said firm, have sold large quantities of the preparation.

The sale of "Brown's Iron Bitters" (Powell's deposition) was begun in the Southwest in the middle of 1881. The testimony offered by complainant tends to show "that the 'Brown's Iron Bitters' has been advertised through the newspapers, circulars and tacking cards.'"

Mr. Powell testifies that they have used the word "tonic" in connection with their medicine, claiming for it tonic effects.

Jackson, another witness, testifies that in the summer of 1886 he posted up certain tacking cards in Little Rock, and Mr. Lincoln also posted up a certain poster or snipe; copies of both posters are attached to his deposition.

The witness Jackson also testifies at great length as to various matters of *hearsay*, all of which is objected to and which we take it will not be considered by the court as establishing anything, being wholly incompetent.

The defendants' evidence establishes that Mr. E. L.

Brown from August, 1869, to May 1st, 1881, was traveling salesman for a Louisville wholesale drug house; tha he traveled during the whole of that period in Alabama, Arkansas, Mississippi, West Tennessee, Southern Kentucky and Eastern Texas and became very extensively known to the trade. During this period he was struck with the large amount of "Harter's Iron Tonic" that he sold, and made up his mind, that when he went into business for himself, which he expected to do as soon as he could, that he would get out a preparation of iron to sell to the trade, knowing that Harter's Iron Tonic was the only preparation of iron that had any extended sale. In May, 1881, he formed a partnership with C. J. Lincoln, of Little Rock, which was dissolved in December, 1883. The firm name was part of the time (Lincoln's deposition) C. J. Lincoln, and part of the time Lincoln & Brown. Mr. Brown did not personally go to Little Rock until December, 1881, when, following out his preconceived notion, he instructed the chemist of the firm to prepare a formula, and they devised a label and began to advertise it by circulars, newspapers and their traveling agents. They sold some at retail in 1881, of which no record was kept. In spring of 1882, began sales to the trade.

When the firm was dissolved, Mr. Brown sold all his rights and interest in the firm to Mr. Lincoln, including the proprietary medicine "Brown's Iron Tonic."

It is testified to by Mr. Brown and Mr. Lincoln (R. 46 and 63) that they got up "Brown's Iron Tonic" and its label to distinguish it from all other preparations; that "Brown's Iron Bitters" at that time was but little, if at all, known in their locality, and that the designation "Brown's

Iron Tonic" was adopted naturally and without any reference to "Brown's Iron Bitters," which it does not even appear that they had ever seen, until after they determined upon their own remedy and its label. The use of the word "Brown" instead of Lincoln, is clearly shown to have been due to the fact that the remedy was Brown's idea; he insisted on it, and he was personally well known to the trade.

The first label of "Brown's Iron Tonic" was on a white ground, which was afterwards changed to its present color, a yellow.

The evidence of defendant also shows, that C. J. Lincoln and E. L. Brown, while they were together, sold, and Mr. Lincoln since, has sold their medicine as an entirely distinct medicine; that they kept "Brown's Iron Bitters" in stock, and instructed their clerks and salesmen to sell it whenever called for, and not to substitute one for the other.

There has been expended by C. J. Lincoln & Company and Mr. Lincoln in advertising all the otherwise profits of the sales, about $15,000. In their published drug lists they also advertised them both, one under the head of "bitters" in its appropriate place, and the other under the head of "tonics" in its appropriate place. The testimony of defendants Meyer Bros. show that while they have sold a very few gross of "Brown's Iron Tonic" they have been selling "Brown's Iron Bitters" since October, 1881, and have sold probably 500 gross. They published a monthly list for the trade in which appears "Brown's Iron Bitters;" "Brown's Iron Tonic" does not. In their annual publication under the head of proprietary medicines they quote "Brown's Iron Bitters" under the head of "bit-

ters" and "Brown's Iron Tonic" under the head of "tonics."

Defendants' evidence shows (Lincoln and Sinclair) that there is a difference between "bitters" and a "tonic." "Bitters" suggests spirits; "tonic" does not.

Mr. Brown, Mr. Lincoln and Mr. C. F. G. Meyer, all testify that they know of no instance where "Brown's Iron Bitters" and "Brown's Iron Tonic" have been mistaken one for the other; that they are well known as distinct preparations, and that the labels on each bear no resemblance to each other.

J. J. Wiggs, John Jungkind, P. E. Thomas, C. H. Sayle and John B. Bond testified to the same effect.

P. S. Stevens, Jeremiah Stevens and James H. Nelson, of Bridgeport, Conn., testify to the sale of a remedy as early (one witness says) as 1857, known and labeled as "Ellis' Iron Bitters."

In rebuttal, one Keevil and Duncan testify to Duncan selling to Keevil a bottle of "Brown's Iron Tonic," when he called for "Brown's Iron Bitters." As soon as his wife swallowed it she said: "This is not 'Brown's Iron Bitters.'"

Wm. S. Powell testifies that "Brown's Iron Bitters" were advertised prior to October 24th, 1881, in Little Rock. They received a bill from Little Rock of that date of advertising. (Not competent evidence that it was done, and no evidence that Lincoln and Brown saw the advertisements.) The advertising was done by posters. (Does not say what posters contained.)

Edward G. Wells testifies, as an expert, that there is *danger* of mistaking one for the other.

THE ISSUES.

1st. Has the complainant by the use of the words "Brown's Iron Bitters" become entitled to their exclusive use as a *trade-mark*, as against C. J. Lincoln and E. L. Brown, or C. J. Lincoln, the successor of that firm?

2d. If it has become entitled to such exclusive use of said words as a trade-mark, as claimed in its bill and argument of counsel, does the use of the words "Brown's Iron Tonic," used in the sale of that article by the defendants, constitute an infringement of complainant's rights?

3d. Does the label used in the sale of "Brown's Iron Tonic" resemble the labels used in the sale of "Brown's Iron Bitters" in such a way as to justify the court in finding that it is a fraudulently simulated label of complainants, and that its use should be restrained regardless of the question of trade-mark?

4th. Has not the complainant by its own action surrendered and waived any claim to have the phrase "Brown's Iron Bitters," protected as its exclusive property by injunction against the defendants, or C. J. Lincoln & Co.

BRIEF OF ARGUMENT.

1.

There is no subject, perhaps, in the law in which courts have shown less accuracy, and been more misleading in he use of languge, than in so-called trade-mark cases. A single distinction, however, will, we think, suffice to explain the seeming contradictory language of the adjudicated cases, viz.: That many, if not most of the cases, collected in digests and text-books, under the head of trade-mark, are not trade-mark cases at all, but are simply cases of fraud, where the defendant has been guilty, or charged with being guilty, of unfair, fraudulent competition in business by the use of labels counterfeiting or substantially resembling the labels of rival dealers, there being really no trade-mark as such in the case, Such cases should more accurately be relegated to the head of fraud.

What is a trade-mark? Definitions have been undertaken. "A trade-mark is a symbol, emblem or mark, which a tradesman puts *upon* or *wraps* or *attaches* in some way *to* the goods he manufactures."

Bouvier's Law Dictionary, Vol. 2, page 603.

Browne, in his work on Trade-marks, devotes a whole chaper (Chapter III.) to the definition and nature of a trade-mark, but ends without defining it at all except negatively. He concludes, however (Browne on Trade-marks,

sec. 130), that it is nothing more than a man's *commercial* signature *to* his goods (not his own name).

"A trade-mark may consist of a name, symbol, figure letter, form or device, if used to designate the goods of the manufacturer.

McLean *v* Fleming, 96 U. S. (6th Otto) 245.

A trade-mark must either by itself, or by association point distinctively to the origin or ownership of the article to which it is applied.

Goodyear India Rubber Glove Manufacturing Co. *v* Goodyear Rubber Co. 128 U. S. 598.

There are two ways of acquiring the right to the exclusive use of a trade-mark, one is by adoption and registration under some statute, in which case the right to the trade-mark becomes perfect upon such registration, if followed by use within a reasonable time. There is such a law in Missouri; 2d Vol Revised Statutes, 1475.

The other mode of acquirtng a trade-mark is by its adoption and use by the manufacturer.

The complainant in this case does not claim its alleged trade-mark under any statute or registration, but simply under the common-law right of adoption and user.

In every use of a trade-mark, it is plain, that there must have been an intention on the part of the one using it, to adopt and use the symbol, mark, device or whatever is selected, *as the trade-mark* of the manufacturer so adopting it, to indicate in that way to the public the origin of the goods.

A bare reference to the label of complainant will disclose the fact that it does not and has not, and its assignor did not intend to adopt as its trade-mark the words "Brown's Iron Bitters." On one of the sides of the label and at one end thereof is found what it has always supposed was its *trade-mark*. We refer to the words, letters and circle one side of the label as follows: —

NONE GENUINE

Without This Trade-Mark.

REGISTERED MAY 21, 1878, BY

W. S. POWELL.

There is no evidence, however, that this so-called trade-mark was ever registered or that Brown's Iron Bitters was manufactured or sold as early as 1878. In these respects it would seem to misrepresent the facts.

It seems to us perfectly obvious that the words "Brown's Iron Bitters" were not intended by complainant until the

exigencies of this case suggested it, as a trade-mark by the complainant or its predecessor. The letter of August 28, 1882, is proof positive and conclusive, that there was no such intention at that time. It is clear to us, and we think it will be to the court, that the phrase "Brown's Iron Bitters" was simply the natural, usual way of a manufacturer referring to his goods by a descriptive appellation, not by way of trade-mark, but simply by the use of his own name connected with words descriptive of the leading ingredient, and if seen fit, as in this case, by some other word indicative of its leading qualities.

A trade-mark may consist of parts, but they are always joined or connected together to form a whole. It may even be, that a trader may adopt two or more distinct trade-marks for the same article, although we can see no objections to it on the ground of utility, and do not recollect of ever having read of such a case, or to have seen more than one upon a single article of commerce.

The complainant in its bill shrinks from committing itself to the proposition that the words "Brown's Iron Bitters" is a true trade-mark, and declares that if it is not entitled to the words as a trade-mark the acts of defendant are fraudulent and ought to be restrained. When it comes to the prayer of the bill, it asks, not that defendants be enjoined absolutely from using the words "Brown's Iron Bitters," which would be the only appropriate prayer if they constitute a trade-mark, but that the defendants "be forever enjoined and restrained from in any manner using any mark or marks, label or labels containing the words 'Brown's Iron Tonic' *in such manner and form as to mislead*, etc."

Now this is a prayer not against the use of a trade-mark but against a similated label which proceeds, as before noticed, on the ground of fraud.

Can the words "Brown's Iron Bitters" or any of them be used as a trade-mark? We say no, both upon reason and authority.

1st. The name or patronymic Brown, the name of two of the three partners composing the original partnership firm doing business under the name of Brown Chemical Company, could not, and cannot be used as a trade-mark.

True, a trader of a different name, or one not entitled to use the name, who manufactures a similar article, cannot lawfully use the name "Brown" *in such way*, as to represent, that the goods or medicines manufactured and sold by him are the goods or medicines of his rival bearing the same name, but this is because such conduct amounts to a fraud, and not because either has a trade-mark in the name.

A trade-name or trade-mark must be a commercial arbitrary name or trade-mark, not the trader's own real name, because that would prohibit and destroy competition in that particular line of business, from every other man of the same name, which is against the commercial policy of the law. A word or a name to be a trade-mark must be arbitrary.

Amoskeog Ma. Co. *v.* Spear, 2d Sandf. 597;
Canal Co. *v.* Clark, 13 Wall. 322.

"A man's name may become affixed as a good-will to a "particular business at a particular locality, but good-will "and trade-marks are different things. It is the opinion

"of the ablest jurists that a person's name cannot be an "essential element of his trade-mark."

Browne on Trade-Marks, sec. 197.

"The rule is that a man cannot turn his name into a "trade-mark; any other rule would lead to most absurd "conseqences."

Same author, sec. 206.

"The words 'Johnson's American Anodyne Liniment' "cannot be the subject of a trade-mark. Any person by "the name of Johnson has a perfect right to make and "vend liniment, anodyne liniment, American liniment, "and in offering it for sale to call it by its proper name. "The right to the use of construction of words not being "exclusive (in point on counsel's claim to the construction "of words 'Brown's Iron Bitters'), said words cannot be "a trade-mark, being merely a label or advertisement and "nothing more."

Same author, sec. 125.

"The rule is that a man cannot turn his name into a "trade-mark. There are several *dicta* the other way, but "they must be attributed to a loose habit of speech, or a "want of acquaintance with the indispensable require- "ments of a trade-mark."

Same author, sec. 200.

"Fancy names may become the subject of a trade-mark, "*because* not usual or necessary to describe the prepara- "tion."

Same author, sec. 236.

In Clark *v.* Clark, 25 Barb. 76, the plaintiffs manufactured spool cotton, and had adopted a peculiar kind of trade-mark, consisting of circles and other distinguishing details. The style of plaintiff's firm was J. Clark & Company. The defendants, after the plaintiff's trade-mark had become well known for many years adopted the same trade-mark, with minor colorable differences. The court directed (the case being between the original manufacturers of both threads) that the defendants change the order of color in the four circles of the trade-mark, saying; "There would still be a similarity between "the labels of the two. But this results from two persons "of nearly the same name being engaged in the "same business, and the undoubted right of each to use "his own name, and to describe the article which he "sells by its well known name, but does not result from "an imitation of the work of another."

In Croft *v.* Day, 7 Beavan, 84, Day & Martin in 1801 established the firm of Day & Martin, manufacturers of blacking. In 1808 Martin went out of the business and transferred his interests to Day. Martin died in 1834 and Day in 1836. After Day's death the business was carried on in the name of Day & Martin by Day's executor, Croft. The defendant, Day, nephew of the elder Day, set up as a blacking maker, and used a label of the same color and size, with the letters arranged precisely the same and with the same name, Day & Martin, on the boxes.

The defendant was enjoined. The court said: —

"My decision does not depend on any peculiar or ex-
"clusive right the defendant has to use the name of Day &

"Martin, but upon the fact of the defendant using their "names (of Day & Martin) with certain circumstances and "in a manner calculated to mislead the public."

And further on: "He (the defendant) has a right to "carry on the business of a blacking manufacturer honestly "and fairly; he has the right *to the use of his own name.* "I will not do anything to deprive him of that or any "other name calculated to benefit himself in an honest "way, but I must prevent him from using it in such a way "as to deceive and to defraud the public."

This case clearly recognized the right of the nephew Day to use his own name on his blacking, but not the name of Day & Martin upon labels of the same color, size and other similar details. In other words, it was a fraudlent simulated label which was enjoined and not the use of the same name.

In Holloway *v.* Holloway, 13 Beavan, 209, Thomas Holloway had for years made and sold pills and ointments and put on the labels "Holloway's Pills and Ointments." His brother, Henry Holloway, subsequently manufactured pills and ointments with the same designation. The pill boxes and pots (of ointment) of the latter were similar in form to, and were proven to have been *copied* from those used by the former.

The injunction was granted. The master of the rolls in delivering his opinion said:—

"The defendant's name being Holloway he has a right "to constitute himself a vendor of Holloway's pills and "ointments, and I do not intend to say anything tending "to abridge any such right. But he has no right to do it "with such *additions* as to deceive the public, and make "them believe, that he is selling the plaintiff's pills and

"ointments. The evidence in this case clearly proves, "that pills and ointments have been sold by the defendant "*marked in such a manner*, that persons have purchased "them of the defendant, believing that they were buying "goods of the plaintiff."

In McLean *v.* Fleming, 6th Otto, 245, Dr. Charles McLane of Morgantown, Va., made and sold liver pills putting them up in wooden boxes labeled "Dr. McLane's Liver Pills." In June, 1844, one Jonathan Kidd purchased the exclusive right from Dr. McLane and began to manufacture and sell these pills, adopting a label. In 1845 Kidd formed a partnership with John Fleming under the name of Jonathan, Kidd & Co. Kidd died in 1853, and Fleming, the surviving partner, and one Cochrane Fleming having purchased from Kidd's executors all his interest in the business entered into partnership under the name of Fleming Brothers. That firm continued until Cochrane died in 1865. John carried on the business in the firm name until his death in November, 1870, whereupon the plaintiff succeeded under the will to all his rights in the business.

Up to August, 1847, the pills in question were wrapped in an ordinary printed label. In that year Kidd & Co. put the pills up in wooden boxes, on the cover of each of which were stamped in red wax the words "McLane's Liver Pills." Various other changes were made by different successors to the business, on the label and trade-mark.

The defendant James H. McLean commenced at St. Louis Mo., to manufacture his medicine and to sell liver pills under the name of Dr. McLean's Universal Pills and at different times used two labels referred to as Exhibit K and Exhibit L. He also used *a stamp in red wax on his*

boxes, and his label resembled in its details the plaintiff's. The defendant was enjoined from using the words "Dr. J. H. McLane's Universal Pills or Vegetable Liver Pills" *upon any label or wrapper for boxes or other packages of pills resembling or in imitation of the labels or wrappers or trade-mark of complainant's label.*

But no injunction went against defendant from using his name in connection with the other words, Liver Pills, upon any other labels, than those found to *resemble* complainant's in such manner as to deceive. In fact he was not disturbed in use of his name or the universal pills as to a label given in evidence which did not imitate or resemble the complainant's. The case is therefore simply that of a simulated label.

The court says (p. 25): "It is doubtless correct to say "that a person may have a right in his own name as a "trade-mark (this is an inaccurate use of the words "trade-mark) against a trader or dealer of a different "name; but the better opinion is, that such a party is not "in general entitled to the exclusive use of a name merely "as such *without more*. *Instead of that he cannot have* "*such a right*, even in his own name as against another "person of the same name, *unless* such other person uses "a form of stamp or label so like that used by the complain-"ing party as to *represent* that the goods of the former are of "the latter's manufacture. Nor will *any other name* merely "as such confer any such exclusive right, *unless* the name is "printed in some particular manner on a label of some "peculiar characteristics, so that it becomes to some ex-"tent identified with a particular kind of goods," etc., etc.

Nothing could be stronger than that it is the resemblance between the labels even against a trader of a *different*

name, and not the use of the same name, even where the name is wrongly used, which the court will enjoin.

We are not surprised therefore that our friend on the other side did not, in the court below, make any use of this case on his claim to a trade-mark in the words "Brown's Iron Bitters," nor did he refer to other cases (hereafter to be noticed) of the Supreme Court of the United States.

2d. It is even clearer and more indisputable, that neither of the words, "iron" or "bitters," can become the subject of a trade-mark. The word "iron" is but the name of a leading ingredient of a preparation. It is also a leading ingredient of the preparation "Brown's Iron Tonic." One has and had as much right as the other to use iron in his or its preparation, and the same right to indicate it by description of the article. The word "bitters," (although not used in the description of "Brown's Iron Tonic") is likewise incapable of being put to an exclusive use by any single dealer or manufacturer of medicine.

Webster defines bitters as a liquor in which bitter herbs are steeped; generally a spirituous liquor. In *materia medica* (says Webster) bitters is applied to such medicinal substances as are characterized by their bitterness. It is then a word used to describe certain characteristics of the preparation. No one trader can appropriate such a word, as any man can lawfully steep bitter herbs in liquor, or use bitter medicinal substances and refer to them as bitters.

In Canal Company *v.* Clark, 13 Wall. 311, the plaintiff

claimed against the defendant the exclusive right of the words, "Lackawanna Coal," as a distinctive trade-name or trade-mark for the coal mined by them, and transported over their railroad and canal to market. The complainants were proven to be the first producers of coal from the Lackawanna Valley, and the coal sent to market by them was known and designated by them as "Lackawanna Coal." The complainant's bill alleged, and it was proven, that the complainant devised, adopted and appropriated the word "Lackawanna" (which was the name of the mining district), and that it had never been used or applied in *combination* (Mr. Cox's point) with the word "coal."

The Court, among other things, says (pp. 322-323):—

"There are two rules which must not be overlooked. "No one can claim protection for the exclusive use of a "trade-mark and trade-name which would practically give "him a monopoly in the sale of any goods other than those "produced by himself. Nor can a generic name, or a name "*merely* descriptive of an article of trade, of its *qualities*, "*ingredients* or *characteristics*, be employed as a trade-"mark and the exclusive use of it be entitled to protection. "The owner of an original trade-mark (quoting from "Amoskeog Man. Co. *v.* Spear, 2d Sandf.) has an un-"doubted right to be protected in the exclusive use of all "the marks, forms, or symbols that were appropriated as "designating the true origin or ownership of the article to "which they are affixed; but he has no right to the exclu-"sive use of any word, letters, figures or symbols, which "have no relation to the origin or ownership of the goods, "but are only meant to indicate their name or quality. He "has no right to appropriate a sign or symbol which, from "the nature of the fact it is used to signify, others may

"employ with equal truth, and therefore have an equal "right to employ for the same purpose."

In Manufacturing Company *v.* Trainer, 101 U. S., p. 51, the suit was to restrain the defendant from using on ticking the letters A. C. A. claimed by plaintiff to be its trade-mark, by which it designated (although arbitrarily) its own ticking of a particular quality. This court again reiterates with emphasis the doctrine in Canal Company *v.* Clark.

But it does more. The court says: "But there is an- "other and equally conclusive answer to the suit. The "label used by the defendants is not calculated to mislead "purchasers, as to the origin of the goods to which it is "attached. It does not *resemble* the device of the com- "plainant; its border has a different figure; it is square "outside and inside. It has written on it the words "Omega and Ring Twist, as well as the letters A. C. A. "Neither the name of the complainant (the names of com- "plainant and defendant were different) nor of the place "where its goods are manufactured, nor the words power "loom are upon it. The two labels are so unlike in every "respect, except in having the letters A. C. A. on their "center, that it is impossible that any one can be misled "into supposing the goods to which the labels of the de- "fendant are attached, are those manufactured by com- "plainant. The whole structure of complainant falls to "the ground."

In Carbolic Co. *v.* Thompson, 25th Federal Reporter, 625, it was held that, as cresylic is a product of coal tar, it cannot be the subject of trade-mark.

The words "Serpent of Pharaoh," the words "Night-Blooming Cerums," "Dessicated Cod Fish," "Cable Twist Tobacco" were all rejected by the patent office

(during the act of 1870), as trade-marks on the ground that they were merely descriptive.

Browne on Trade-Marks, secs. 166 and 167.

In Lea *v.* Deakin, 11 Biss. 23, it was held that the plaintiffs by prior appropriation had no right to the exclusive use of the words "Worcestershire Sauce."

In Caswell *v.* Davis, 58 New York, the plaintiff manufactured and sold a medicine under the name of "Ferro Phosphated Elixir of Calisaya Bark." The defendants manufactured and sold a similar preparation under the same name. An injunction was denied on the ground that the words used were common words to indicate the character, quality, and composition of the thing and could not be appropriated.

In Ayer *v.* Rushton, 7th Daly, 9, the plaintiff invented and prepared a medicine for chest disease, to which he gave the name "Ayer's Cherry Pectoral," and which was extensively used and sold; one of the ingredients was extract of wild cherry; pectoral was a word applied to medicines for chest diseases.

The defendant Rushton prepared and sold a medicine called "Cherry Pectoral," intended for the same kind of diseases. He also (like Lincoln) sold Ayer's, but always recommended customers to take his medicine, which was *sold for fifty cents a bottle, while Ayer's sold at* $1 *per bottle.*

There was (as in this case) a marked difference in the color of the labels. An injunction was denied. The court says: —

"Defendant certainly did take advantage of the celebrity "of plaintiff's preparation to which the name of Cherry "Pectoral seems from the findings to have been *exclu-* "*sively* applied in the trade for the last thirty years, or "more, to gain a readier market for a preparation of his "own, which he called Cherry Pectoral. To this extent "no doubt defendant proposed to build up a business "upon and avail himself of the fame, which years of sale "and a great expenditure of money for advertising on the "part of plaintiff. But there is clear proof that he "did not intend to incur any penalties for *imitation of* "*devices, labels or marks*, or for attempts to impose his "compound upon the public as the article plaintiff man-"ufactured."

The court then goes on to decide that extract of cherry was one of the ingredients of both medicines; that "pectoral" applied to chest diseases, and, therefore, that the words singly or combined could not be the exclusive property of plaintiffs.

3d. If the complainant has no exclusive right to the use separately of the name "Brown" or the words "iron" or "bitters" as a trade-mark or trade-name, has it any such right to the combination or collection of the words into the phrase "Brown's Iron Bitters"?

This seems to be the final and sole claim of complainant's counsel, or, at least, it was in the Circuit Court.

Upon both reason and authority the ground cannot be maintained.

The words themselves not being the subject of a trade-mark, by what logic can they by an order of use together, ***natural, usual and necessary*** be held to get a new quality of exclusive proprietorship? How can exclusive property

be assumed of a phrase composed of words which could not, except by the most forced and labored construction, be put together any other way. Surely property cannot be affirmed of ordinary grammatical or rhetorical sequence of words or sentences. The complainant will not be allowed to appropriate the mode of using words together which all men, speaking or writing the language, would use.

We would like to inquire, what other order of combination of these words could be used, than is employed in the case of both preparations, and what preparation uses any other. Ellis, when in 1857 he got up Ellis' Iron Bitters for about the same disease used the same order of the words precisely (R. 43). So did Harter in his Harter's Iron Tonic, and so does every other trader or manufacturer, and especially manufacturers of patent medicines. The name of manufacturer comes first, the noun last, and if any adjectives, expressive of ingredients or otherwise are used they come between the name of the manufacturer and the named used as the distinctive title of the remedy.

In Caswell *v.* Davis, 58th New York, the plaintiff claimed an exclusive right to a combination of words, "Ferro Phosphated Elixir of Calisaya of Iron." The combination seemed striking and the words not familiar, but the claim was denied. The Court said: —

"There is no principle more settled in the law of trade-
"marks, than that words or phrases which have been in
"common use and which indicate the character, kind,
"quality and composition of the thing, may not be appro-
"priated by any one to his exclusive use. Nor does it
"matter that the form of words, and phrases *also* indicate

"the origin and maker of the article. The combination "of words must express *only the* latter."

"It is the result of all the decisions, that known words "and phrases indicative of quality and composition are the "common property of mankind. Even when the *sole* pur- "pose of the one who first uses them is to form of them a "trade-mark for himself expressive *only* of origin with "himself, if the use do in fact (the words used) show forth "the *quality* and *composition* of the article sold by him, he "may not be protected in the exclusive use of them," etc.

And further on in the same case: —

"Nor does the coupling together in a *new* combination "of words which had before that time been used apart, "and had entered into the common or scientific vocabu- "lary give a right to the exclusive use of such combina- "tion, where it is indicative not of origin, maker, use and "ownership *alone*, but *also* of quality and other charac- "teristics."

The phrase "Brown's Iron Bitters" has not even the merit of being a new "combination" of words. Ellis thought of it, Harter thought of it, every other manufacturer of patent medicines has thought of it, and could not help but think of it, if he wrote or spoke the language in the usual natural necessary way. The right of the combination must be exclusive, peculiar, or under no view can it be protected. But the decision quoted (and there is none to the contrary), holds, that if the collocation has got a single word in which it refers to the ingredients, qualities or characteristics of the remedy, the combination is broken and cannot be protected, no matter how striking, unusual or peculiar it may be. The combination

"Brown's Iron Bitters" has two words in it which distinctly refer to ingredients and characteristics. Iron refers to an ingredient; bitters to the characteristics.

In Goodyear India Rubber Glove Mfg. Co. *v.* Goodyear Rubber Co. 128 U. S. 598, this court decided, that names, which are descriptive of a class of goods cannot be adopted as a trade-mark; and in the same volume, in Stachelberg *v.* Ponce, 569, it was decided that the phrase "La Normandi" could not be exclusively appropriated, as a brand by a cigar manufacturer as against another who also used the phrase.

In Papham *v.* Cole, 66th New York, 96, the combination "Prime Leaf Lard" was attempted to be upheld, but the claim was denied by the court.

In Ayer *v.* Rushton, 7 Daly, p. 9, the combination of words "Ayer's Cherry Pectoral" was held not to be entitled to protection because it contained words indicative of ingredients and characteristics.

The words "Serpent of Pharaoh" as applicable to a peculiur contrivance like a serpent was held not to be the subject of a trade-mark, because it was natural to use the word serpent.

Browne on Trade-Marks, sec. 166.

The combination of words "Johnson's American Anodyne Liniment" was held by the patent office not to be the subject of a trade-mark.

Browne on Trade-Marks, sec. 135.

In Canal Co. *v.* Clark, 13 Wall., the words "Lackawanna Coal" was claimed to be a new combination of the words

adopted and devised by the plaintiff as a designation for its coal. The claim was denied because neither one of the words could be exclusively appropriated by the complainant.

In Leclanche Battery Co. *v.* Western Electric Co. the plaintiffs claimed that they had a trade-mark in the combination of words "Disque" or "Pile Leclanche" (Leclanche being the inventor). The claim was denied although an injunction went on account of the great similarity of the labels.

So in 25th Federal Report, 625, Carbolic Soap Company *v.* Thompson, complainants manufactured and sold "Buchan's Cresylic Ointment." Defendant manufactured and sold "Lowe's Cresylic Ointment." The court denied the claim of trade-mark in the combination "Buchan's Cresylic Oiniment," because the word "cresylic" is the name of one of the ingredients, an article of commerce, but granted the injunction from the similarity of the labels in color, design, style and other details.

The claim of counsel is the last refuge of an ingenious mind.

II.

Was the use by Lincoln and Brown of the phrase, "Brown's Iron Tonic," or its present use by C. J. Lincoln inequitable or in violation of any right, exclusive or otherwise, which belonged to the complainant or its predecessor?

We contend that even if the complainant or its predecessors had or have a trade-mark in the collocation, "Brown's Iron Bitters," Lincoln and Brown did not in-

fringe that trade-mark by the use of the words, "Brown's Iron Tonic," unless the whole label of complainant's was imitated in such a manner as to constitute a fraud. Assuming for the present (and the assumption was admitted at the hearing in the court below) that there was no such imitation of the label, it is clear, we think, that the combination, "Brown s Iron Tonic," is different both to the eye and the ear. The three words present a different result to both these organs. The testimony of Mr. Lincoln and Mr. Sinclair shows a difference. Bitters is supposed to be an alcoholic preparation, or may even be dry bitter powders to be put in liquid, while a tonic is not generally considered so.

"Bitters," according to Webster, are bitter herbs steeped in liquor, generally spirituous, or they may be medicinal substances characterized by their bitter taste.

A "tonic" does not suggest bitter herbs steeped in liquor or bitter medicinal substances; but it is a medicine, according to Webster, "intended to increase the strength, and gives vigor of action to the system."

The claim of trade-mark being in the combination, and not in one or two of the words, the combination, "Brown's Iron Tonic," is distinguished from "Brown's Iron Bitters," in the fact that it differs in its most important word, and because, that difference suggests in itself a difference in the remedies to which they are respectively applied.

If they were used upon similar labels, the difference in the words forming the collocation and the differences in the remedies suggested by them, might to the eye, *but not to the ear*, disappear in the sameness of the labels.

But that is not true in this case. The difference in the labels, in size of bottles, form of labels, color, and each and every feature are so striking, as to attract the attention of the most unobservant. A combination of words is not the same, as another combination, when it differs as to its parts, and the ideas suggested by it.

Even if the complainant had a trade-mark in the combination of the words "Brown's Iron Bitters," it cannot reasonably be claimed that another man by the name of Brown could not get up a combination with his own name, making a sufficient distinction in some part of it to make a different combination, and enforcing this individuality by using a label calculated to emphasize that difference.

But we regard the claim of complainant to the phrase "Brown's Iron Bitters" as a distinctive, exclusive trade-name or mark, so untenable as to merit but the slightest consideration.

III.

Is the label of "Brown's Iron Tonic" so similar to complainant's as to justify an injunction against defendants for the sale of a medicine having a fraudulently simulated label?

At the hearing counsel was candid and sagacious enough to concede, that the labels are not similar. Indeed, the most casual notice shows that they are remarkably distinct and dissimilar in every feature of color, size, form, appearance and detail.

"It is only where the adoption or imitation of what is claimed to be a trade-mark amounts to a false representation that there is any title to relief against it. True, it

may be that the use by a second producer in describing truthfully his product may have the effect of causing the public to be mistaken as to the origin or ownership of the product. But if it is just as true, as to the goods of another, who first applied it, and who therefore *claims* an exclusive right to use it, there is no *legal* or *moral* wrong done. Purchasers may be *mistaken*, but they are not deceived by false representations, and equity will not enjoin against telling the truth."

Manufacturing Co. *v.* Trainer, 101 U. S. 51.

This furnishes a complete answer to the complainant's claim to the words "Brown's Iron Bitters," as well as to all other commendatory words used on Lincoln & Brown's label claimed to be similar to words on complainant's label.

IV.

Is the complainant in a position to now claim that the phrase "Brown's Iron Bitters" is the subject of a trade-mark or trade-name, and to enjoin defendants from the sale of the preparation "Brown's Iron Tonic"?

We contend that it is not.

On the 21st day of August, 1882, the predecessors of complainant, the partnership firm of Brown Chemical Company, wrote to C. J. Lincoln & Co. a letter, making inquiries about the manufacturing Brown's Iron Tonic, and suggesting whether or not they were not trespassing on their rights. On August 24th, 1882, C. J. Lincoln & Co. promptly replied (p. 62 R.) stating the reason why were manufacturing and selling the tonic, which are the reasons now insisted on, viz.: 1st, that Mr. E. L. Brown had been admitted to the firm; 2nd, that they commenced manufac-

turing before Brown Chemical Co.'s vigorous system of advertising; 3rd, that the tonic bears no similarity to the bitters; 4th, that Mr. Brown had traveled thirteen years in Arkansas, and was well known throughout the State, *and for that reason* they used his name in connection with several proprietary articles.

Each of these statements was true, and stands established and unimpeached in every particular. A sample bottle was sent by express to the Brown Chemical Company. The Brown Chemical Company by letter of August 28th, declares that "*upon examination we cannot see where it conflicts with us, except in the multiplicity of the Brown family.*"

See Record, p. 73, being Exhibit 10 to C. J. Lincoln's deposition, the original exhibit being in this court as per stipulation, Record 17; see also Record 51 and 52.

Effort was made at the hearing below to pass over this letter lightly as an idle, careless communication. Not so. The first letter of the Brown Chemical Company was a letter indicating energy and spirit in the defense of "Brown's Iron Bitters" against all infringers. The letter of C. J. Lincoln & Company was induced by a most commendable spirit of candid statement, and explanation, accompanied by the arttcle itself, inviting inspection, and determination, by the Chemical Company of any complaint they might see fit to make. The Chemical Company had thus a fair full opportunity to make known its objections, if they had any, and to assert any peculiar claim they had to the phrase "Brown's Iron Bitters." This was not the acquiescence of the careless or busy dealer, but the deliberate, thoughtful, well-considered act

of the party interested. The Chemical Company made no claim or intimation of a claim to the combination phrase "Brown's Iron Bitters" as against C. J. Lincoln & Co. It recognized the right of that firm to use the phrase "Brown's Iron Tonic," and after seeing and comparing that preparation with its own and seeing their utter dissimilarity, declared that there was "*no conflict.*"

It should be observed that the label of Brown's Iron Tonic was at that time of *a white ground like complainant's*, and not yellow as now. The firm of C. J. Lincoln & Co. had been at comparatively little expense in manufacturing their medicine; at that time they might then have abandoned it with but little cost, if reasonable protest had been made. It became then and there the duty of the Brown Chemical Company to speak and protest; they did not; but approved and encouraged the new enterprise, and the firm of C. J. Lincoln & Company and its successor have expended the, to it, large sum of $15,000 in pushing its remedy, but have made as yet no profit out of it, although they ought to have made large profits if the confusion exists between the two remedies claimed in this case.

Afterwards they made complaints to C. J. Lincoln & Company (exhibit 11 Lincoln's deposition, R. 73), not of any infringement, but of a certain advertisement which claimed for "Brown's Iron Tonic" a superiority over "Brown's Iron Bitters" in merit and cheapness. This was apologized for by Lincoln & Company (exhibit 12 to Lincoln's desposition, R. 74), although what there was wrong in it we do not see. It serves however to show the good intentions of the firm, and the somewhat testy and arrogant spirit of the Brown Chemical Company.

It is true that this court in McLean *v.* Fleming, 96th Otto, decided, that mere acquiescence in the use of a clearly fraudulent label would not prevent an injunction although it would prevent an accounting for profits. But, as before stated, here is something more decided and declarative than a simple acquiescence. Here is a case of labels wholly dissimilar, where the defendants vendor were told to go ahead, that there was no conflict, and they did proceed at great cost, and expense, and now a novel claim is made, evidently not then thought of, or if thought of rejected as untenable.

We have looked in vain for any decision, which holds, that an injunction under such circumstances should be granted. The doctrine of courts of equity is well known in injunction cases above all others. Laches are not favored. A party may loose his rights by sleeping on them. In a clear case of fraud mere asquiescence may not debar the complainant, but it must be a clear case, and and not a doubtful or strained one, which is this case at its best.

In a cause of palpable fraud, the defendant knowing the rights of the injured party may not say: you were silent, you did not interfere. But where the parties meet in a spirit of adjudication so to speak, an equitable obligation arises for both parties to make known their claims and objections, and if they not only do not make them known but declare they have none, and approve affirmatively, they should be held to be estopped, after the lapse of years to review their previous judgment, which the other party has acted on to his prejudice.

In Lea *v.* Dakin, 11 Bissell, 23 (Drummond, C. J.),

one of the grounds of refusal of an injunction was the many years of acquiescence of the plaintiff.

An injunction against a conduct of a business, although often salutary, is against the freedom of competition, which is of the first importance in the commercial world, and should never be granted, except for the gravest and best reasons.

It does not appear in evidence that on August 28th, 1882, the faculties of seeing or hearing of the members composing the firm of Brown Chemical Company were in any wise impaired, either by an excessive use of "Brown's Iron Bitters," or otherwise. It is not shown that the corporation called "Brown Chemical Company," or its officers are superior to the old partnership in the valuable organs of ear and eye, and in law the corporation, when organized in April, 1884, took the rights of the partnership *cum onere*. Mr. Powell was an active member of the firm, as he is the active manager of the corporation. According to the order of nature Mr. Powell's eye-sight and hearing should have been better in August, 1882, than in 1887. The truth of it all is plain enough. The partnership, Brown Chemical Company, had not as business men in 1882, any purpose of claiming anything fanciful or peculiar on account of the simple, natural, usual and very ordinary combination of the words, "Brown's Iron Bitters." They then could see, as any one can now, who is not biased, that in the difference of words and ideas between the two descriptive phrases, "Brown's Iron Bitters" and "Brown's Iron Tonic," emphasized by the very striking difference between the other general and special features of the two labels, there was no infringement

or conflict. They, while a partnership, and afterwards as a corporation, saw no reason to change their attitude until in the pride and haughtiness of their hearts, engendered by great prosperity and affluence—the frequent effect of great success—they try to strike down a comparatively humble rival.

This idea of a combination of well known descriptive words by coition, or rather by juxtaposition, bringing forth a new and eccentric offspring, is the child of ingenius counsel, having no features to suggest as its parentage the original intention of the Brown Chemical Company.

Upon this point it should be further noticed, that Mr. Lincoln, by the position taken by the Brown Chemical Company in its letter of August 28th, 1882, was justified in buying out his partner, Brown's, interest in "Brown's Iron Tonic" in the belief that so far as the Brown Chemical Company was concerned he would not be disturbed.

REPLY TO BRIEF AND ARGUMENT OF COUNSEL FOR COMPLAINANT, AS MADE IN COURT BELOW, AND WHICH IT IS PRESUMED WILL BE RENEWED HERE.

Much that has already been urged affirmatively on behalf of defendants, will be allowed to stand as our reply to counsel's argument. We shall notice a few of counsel's points, but shall mostly devote our attention to the authorities cited in the brief.

1st. Counsel in the court below stated, that "it is admitted, that the designation 'Brown's Iron Tonic Bitters' as a whole is the complainant's property." We have been unfortunate in the use of language if any such admission

has been made. It is admitted, that there is no other remedy in the market by the designation "Brown's Iron Bitters," and that when called for by that name complainant's remedy is meant. But it is expressly denied that it has any exclusive property in the description "Brown's Iron Bitters."

It was admitted by counsel in the court below that when a bottle of Brown's Iron Bitters and Brown's Iron Tonic are placed side by side "a marked difference is at once observed," but that by giving notoriety to the name "Brown's Iron Bitters" the complainant did not make known, what the purchaser would see, and that he may be misled when he sees "Brown's Iron Tonic."

We have sufficiently argued the question of the right of complainants to appropriate the phrase "Brown's Iron Bitters," and as well, have stated our position as to the sound of the descriptive phrase applied to the two articles. So far as sound goes, they do not sound alike, and if they did, there would be no cause for injunction, unless the "Brown's Iron Tonic" *label* was a simulation of complainant's. We do not deny but that a word *the proper subject* of a trade-mark might differ in details of orthography, and yet if it sounded like the word adopted rightfully as a trade-mark, it might be an infringement. But this can never be so as to words not the proper subject of trade-mark. There is, however, no such thing as an oral trade-mark. A trade-mark must always be written, printed, painted or in some other way *put upon* a commercial article as something addressed to the eye, and not something by word of mouth addressed to the ear *alone*.

Counsel cites that as illustrative of his, to us somewhat

obscure doctrine of "*ear*" trade-marks, the case of Hier *v.* Abrams, 82 N. Y. 523, from which copious extracts are made.

That suit was a case brought by the plaintiff to restrain the defendant from infringing on his trade-mark used on his tobacco boxes, which consisted of the word "Pride," with certain attendant devices. Now, the word "Pride," as put on a tobacco box, was manifestly an arbitrary word and in the most technical literal sense a genuine trade-mark, and the defendant in that suit was properly enjoined from using the same word on his tobacco boxes as part of his trade-mark.

In Burnett *v.* Phalon, 9 Bos. 102, cited by the counsel (p. 5), the plaintiffs manufactured a hair-oil, of which the essential element was cocoanut oil, for which they invented a name, "cocoaine," and adopted it as their trade-mark. The defendants manufactured a hair-oil to which they applied the word "cocoine." It was held that the word "cocoaine" was a new arbitrary word, and the proper subject of a trade-mark, and that "cocoine" was sufficiently similar in appearance and sound to constitute an infringement. This again was a case of infringement of a valid trade-mark.

In Congress Spring Co. *v.* High Rock Congress Spring Company, 45 New York, 281, cited by counsel (p. 5), the word "Congress" was held to be a valid trade-mark for plaintiff's medicinal water, *because* there was but *one* spring of that name at Saratoga, and because the water had peculiar medicinal qualities different from all other waters.

The defendant *prepared* a medicinal water, and applied

plaintiff's trade-name to it, using at the same time certain marks and inscriptions of a form similar to those of plaintiff's, calculated to induce the belief, that the defendant's article was the plaintiff's.

This was both a trade-mark and a fraudulent label case.

In Newman *v.* Alvord, 51 New York, 189 (cited by counsel, p. 5,), the plaintiffs manufactured cement or water-lime from stone taken from quarries near Axron, New York, and sold the same, and it was known and described as Axron Cement, and the barrels were so labeled "Newman's Axron's Cement."

The defendants manufactured their cement at *Syracuse*, and for the purpose of deceiving the public and getting the benefit of plaintiff's reputation, also applied the word "Axron" to their cement. It was held that the word "Axron" as against the defendants' *false use* of the word was a fraud, and he was enjoined.

This is somewhat opposed to Canal Company *v.* Clark, 13th Wall., although we have no fault to find with it. It does not touch this case.

2d. Is is claimed that the complainant's remedy has become known as "Brown's Iron Tonic," and that this alleged circumstance strengthens the complainant's position. On the doctrine of the cases heretofore cited in this brief, and many more which might be quoted, as well as the reason of the matter, it is, we think, sufficiently established that if the complainant had, in the first instance, described his remedy as "Brown's Iron Tonic," instead of "Brown's Iron Bitters," and continued to so describe it, complainant would not thereby have acquired any proprietary right to the descriptive words, either considered

collectively or separately, since the name "Brown" might be used by any other trader by the name of Brown, and the words "iron," "tonic," are words descriptive of quality and characteristics, which disables them for separate or collective exclusive use or proprietorship.

But, irrespective of this position, which we consider invulnerable, the complainant's claim to the word "tonic," a substitute for the word "bitters," is not fair or valid. Counsel quoted Webster's definition of a tonic correctly, but did not see fit to *also* quote the same author's definition of bitters, but gave his own (the counsel's) definition of bitters. As before given in ths brief, the word "tonic," as defined by Webster, is a word used to describe a medicine which increases the strength and gives vigor to the system. In other words, tonic is descriptive of the *effect* on the system. Bitters, on the contrary, according to Webster (and the testimony of the witnesses), is a word which conveys the idea of a liquor made bitter by bitter herbs or a bitter medicinal substance, which, as Mr. Sinclair says (R. 100), may be a powder. In other words, the word "bitters" is used to describe the quality of medicine as to taste as its leading feature, although it may incidentally, but not necessarily stimulate the system. Complainant on the form of its label does not exclude, but rather affirms this idea, by claiming that "Brown's Iron Bitters" is not a subsiitute for whisky, "not sold *as* a beverage, not composed *mostly* of spirits, "not sold in bar-rooms." That is, this preparation is intended as a medicine, although a bitters, but not as has been charged against many other bitters, a mere substitute for liquor, and often used in bar-rooms as a mere bar-room drink.

It would seem, that complainant ought to have been content with the descriptive word chosen by its predecessors, and not tried to appropriate as an *alias* a descriptive word of a rival dealer. If "bitters" did not properly describe their medicine, they should not have adopted it; or, having adopted it should have abandoned it and adopted the word "tonic" before Lincoln & Brown used it, although it is not claimed by us that Lincoln & Brown, or anybody else, could get an exclusive right to it. The complainant is welcome to it as an *alias*, or a complete substitute for bitters, if it repents the use of its old word. We will be as fair as complainant's predecessors were in 1882, and say that "upon examination we cannot see where it conflicts with us except in the multiplicity of the Brown family," with the qualification that it maintains the same differences between its label, and Lincoln & Brown's as heretofore and now.

We deny counsel's assertion in the court below that "Brown's Iron Tonic" is a bitters. There is no evidence that it is a bitters in any respect, or that it has ever been claimed to be a bitters. The word "bitters" does not appear anywhere on Lincoln & Brown's label. The "bitters" field was left entirely to complainant and its predecessors, although they have been trying to break down the fence and get into the "tonic" enclosure. If complainant had been as scrupulously exact as Lincoln & Brown have been to maintain the individuality of their remedy they would not now be claiming the word "tonic." We are willing, however, that they should use it. We have no more legal claim to it than complainant has, or anybody else, although we used it first as a part of our

descriptive title, although we are bound to say, that it would have been neighborly for complainant not to have tried to use it as second choice.

It is true the word "tonic" is used in an obscure way on complainant's label as it *now* is put before the public, but not as part of the descriptive phrase, "the short phrase between seller and buyer," referred to by counsel.

Counsel said in his brief below: "In view of these indisputable facts, it is not remarkable that it was established that the complainant's article is *often* referred to and designated 'Brown's Iron Tonic.'" How is it so established (although wholly immaterial)?

Mr. Powell says (R. 30 and 31), he has looked into his correspondence and finds "Brown's Iron Bitters" referred to as "Brown's Iron Tonic." He, however, only produces *one* letter (if he had had more, no doubt they would have been produced) dated March 17th, 1887. This is the only letter produced showing any such mistake, and this occurred *after* complainant's man Jackson had in the summer of 1886 plastered Little Rock with a poster calculated by the manner it uses the word "tonic" to create confusion. What other *evidence* is *there* of actual mistake? The complainant instances by *proper* testimony but two: Mrs. Bottsford at Little Rock told Jackson that she had been using his medicine, "Brown's Iron Bitters;" her daughter suggested it was the "tonic;" Mrs. Bottsford persisted it was the "bitters." The bottle was produced and it was the "bitters." This incident tends to show that the phrases "Brown's Iron Bitters" and "Brown's Iron Tonic" are not mistakenly used one for the other, but the contrary. Both Mrs. and Miss Bottsford used the phrases as applica-

ble to two distinct remedies, the only difference between the two was *which* one the old lady had been using, of which the daughter knew but little. When the bottle was produced it showed, *as it always will*, which it was, and that Mrs. Bottsford knew which it was as distinguished from the other. She had seen Brown's Iron Bitters advertised in the paper; she inquired for it; it was sold to her; it helped her as she thought. Complainant got the credit and Brown's Iron Tonic did not.

The next and only remaining incident is that of Keevil in Texas. Keevil inquired for Brown's Iron Bitters, which he had been in the habit of purchasing; the druggist deceptively gave him Brown's Iron Tonic. He did not observe it at all, relying on the druggist. His wife took a dose. *She detected the difference at once by the taste*, saying, "This is not Brown's Iron Bitters;" they looked, and saw it was not and exchanged the bottle.

The incident is instructive. It would seem to show by Mrs. Keevil vomiting that Brown's Iron Tonic might be used as an *antidote* for Brown's Iron Bitters. A patient whose system has become full of the poison of "Brown's Iron Bitters" has only to take a dose of "Brown's Iron Tonic" to vomit and be relieved and perhaps saved. The stupid fraud of the druggist Duncan would seem to have been providential and to reveal a new and valuable use for the "tonic." But consider the circumstances. Keevil did not by *mistake* ask for Brown's Iron Tonic, intending to ask for Brown's Iron Bitters. He asked for what he wanted: the druggist knew what he wanted, but wrapped up intentionally the other. But another difference existed which defeated the fraud of the seller, viz.: the taste.

But even if there had been a mistake, it would establish nothing. The law as lain down is, that if the labels are so different, as to convey the idea of the distinction "to those ordinarily attentive it is sufficient." McLean *v.* Fleming, 96th Otto, 245 (p. 255). The court in such cases applies the maxim of "*vigilantibus non dorimentibus leges subservient.*"

A purchaser who cannot distinguish between these two remedies is not entitled to be protected against imposition by a court of equity.

Jackson (R. 25) testifies with hearsay volubility as to mistake, etc., but this testimony is formally objected to by motion on file, as incompetent and hearsay; but whether objected to or not, will not be received. In fact, reliance on such testimony rather indicates, that the primary evidence would not have sustained the hearsay, as no effort has been made to take the primary. Besides, the hearsay amounts to nothing.

It should be observed in this connection, that the evidence shows that "Brown's Iron Bitters" is sold in vast quantities all over the United States. Some idea of the extent of the sales can be gathered from the fact, that the complainant and its predecessor have spent as is claimed $1,500,000 for advertising. Surely, if the descriptive phrase "Brown's Iron Tonic" has created any practical material confusion with "Brown's Iron Bitters," more testimony could be produced than *two incidents and one postal card;* the incidents, however, showing that the distinction is kept up, and is well known to purchasers. If any more testimony could have been produced of actual mistakes, the money and energy of complainants would have done it.

Against this, however, is the evidence of six druggists testifying, that there is no confusion (R. 113 to 122); that the two medicines are known to the trade, and retail purchasers as separate preparations, and that they have never known a case of mistake between the two. The evidence of Mr. Lincoln is to the same effect (R. 63). Also Mr. Brown, now a druggist at Memphis (R. 92 to 98). The testimony of Mr. Meyer and Mr. Sinclair is of the same effect (R. 92 to 98). The evidence of defendants completely overthrows the slight and unsatisfactory evidence of complainants upon this point.

An effort was made, in the court below, to turn Mr. Meyer's evidence against defendants. Mr. Meyer is a very conscientious and high-minded man, with notions of competition somewhat above the complainant's, as shown by the slurs against other houses on one of the sides of their label and its effort to tack the word "tonic" to their appellation. He claimed to Mr. Powell and Mr. Powell admitted it "that the phrase 'Brown's Iron Tonic' is so different from the phrase 'Brown's Iron Bitters,' as in itself to be sufficiently distinctive." We think he is correct.

The testimony of Mr. Meyer is not clear whether he understood in the illustration quoted by counsel, that the names of the proprietors were to be considered the same. But it is idle to lay such great stress on the commercial standard suggested by Mr. Meyer. *The law* furnishes a standard in the authorities cited, which is that every man has a right to his own name, and he may manufacture precisely the same character of remedy, as a rival of the same and apply the same descriptive appellation to it, if the labels or other exterior of his goods are dissim-

iliar. Why not take the whole of Mr. Meyer's opinion as to the phrase, "Brown's Iron Tonic?"

Counsel said in court below: "It is conceded that if the name selected had been 'Brown's Iron Bitters,' there would have been reason to bring suit." We have no knowledge of any such concession, expressed or implied, at any time or place. If there is anything not conceded it is this claim, that the collocation, "Brown's Iron Bitters" is the subject of exclusive right in complainant.

Counsel refers to druggist Sayle's remark that "the words, 'Brown's Iron,' would do it (deceive) with a man who was not a close observer; that is the only thing I know of," etc. Yes, so a man might be deceived, but that kind of a man would be likely to take Mustang Liniment, or Jayne's Expectorant, or Prickly Ash Bitters, or Lyon's Katharion hair tonic, or a hair brush, or a syringe, or anything the druggist might give him, instead of "Brown's Iron Bitters."

Equity does not concern itself about these kind of people. We simply ask the court to take the two bottles, "Brown's Iron Bitters" and "Brown's Iron Tonic," and stand them up together, and then say, whether there is anything about them to confuse; and, more, whether or not there is not everything to distinguish.

The word "iron" may be used with the same freedom by one trader as another; it belongs to the race. The name "Brown" belongs to every man by the name of "Brown," and no one Brown can appropriate simply because he spends more money in heralding it, than another Brown does.

In McLean *v.* Fleming, 96th U. S. (6th Otto), the de-

fendant had used his name in connection with "Liver Pills" in several distinct labels. Here was a case of combination of words, yet the defendant was not enjoined as to his label *which did not counterfeit*, or resemble in other respects the complainant's label. (See statement of case, particularly p. 247.)

Reference was made in the court below to the words, "Does not blacken the teeth," which Lincoln & Co. used as part of their trade-mark (so-called). These words (if the court has patience to look carefully) are on one side of Brown's Iron Bitters, near the bottom. They certainly are not used in a way to be noticed or to identify complainant's preparation. Lincoln says in his testimony he used this first. Powell says complainant or its predecessor did. We do not care which is right. No doubt, they both think they are. Brown and Lincoln used the words as descriptive of a quality of their medicine, and undertook to make it part of their trade-mark. We do not think the words serve any office as part of a trade-mark, because they are common words, and express a certain alleged quality of their preparation. Such words cannot be exalted into trade-mark uses any more by Lincoln & Brown, than by the complainant. But the courts will not enjoin the defendants, because their vendors have undertaken mistakenly to use such words as part of their trade-mark, any more than the court would enjoin complainant at the instance of Lincoln (if he was foolish enough to try it) from using the phrase "Brown's Iron Bitters," because they, by a recent revelation, claim it as a trade-name or trade-mark.

Mr. Lincoln claims his medicine will not blacken the

teeth. He gives prominence to it in bold fashion. The complainant rather timidly claims the same thing. They both have a right to claim it, and it would appear, so far as the evidence goes, to be true in both cases.

Counsel complains of the letters "B. I. T." which appear on the front of Lincoln & Brown's label, and says, "Brown's Iron" tends so strongly to create misapprehension that a bare suggestion of bitters is sufficient to cause the concept "Brown's Iron Bitters" to occupy the mind. We would simply say not any mind the court would take any interest in. The are no such minds in the Southwest. "B. I. T." are the first letters of "Brown's Iron Tonic" not of "Brown's Iron Bitters." Then they follow the phrase "Brown's Iron Tonic," and by their appearance serve as a large distinguishing feature between the "bitters" and the "tonic."

Counsel here cites Coffeen *v.* Brunton, 4th McLean, 516. In that case the plaintiff manufactured and sold what he called "Chinese Liniment." The defendant what he called "Ohio Liniment," representing that it contained the same ingredients as the Chinese Liniment. The label of the defendant was like the plaintiff's. It was proven that the defendant's liniment was greatly inferior to plaintiff's; this coupled with the fact that defendant represented that the ingredients were the same, and the fact that the labels were alike was calculated to bring plaintiff's preparation into disrepute. The injunction was granted on these grounds. The case finds no parallel in the one now being considered.

Counsel in the court below reached a climax in charging fraud on Lincoln in the posters put up at Little Rock in 1886.

We could reasonably dismiss this evidence as wholly immaterial to the present issue, if we cared to. These posters form no part of the label on the bottles of "Brown's Iron Tonic," the sale of which is sought to be here enjoined. The defendants did not put up the posters nor authorize them to be put up. If the *particular act* of putting up the posters was wrongful or fraudulent, the remedy is against the party who committed the wrong. That act does not affect the label on the bottles, with which alone defendants are concerned. The act of putting up the posters has relation only to a mode of advertising distinct from the medicine as offered to the public by the defendants.

Again, that act occurred *after* this suit was brought, and as the evidence of Mr. Lincoln shows, was wholly abandoned before the hearing. If this suit was against Lincoln himself, it would not furnish a ground of injunction against selling the "tonic." If an article may be lawfully sold, its sale will not be enjoined because unfairly or fraudulently advertised. The unfair and fraudulent advertising might be, if other necessary elements of an injunction are present; but the lawful sale of the article would remain undisturbed. This would be much more so where the alleged unfair and fraudulent act of advertising occurs after the suit is brought and abandoned before the hearing or trial. A complainant must bring a cause of action into court when he files his bill. He cannot rely on a supposed cause of action arising afterwards.

But the posters do not justify the confident criticism and denunciation of counsel, but rather seem to indicate that the *complainant* is inclined to *create* a confusion between the "bitters" and "tonic," which otherwise would not

exist, if he would as conscientiously refrain from the conspicuous use of the word "tonic," as Lincoln from the use of the word "bitters," which Lincoln has never used in any fashion.

The complainant sent its agent down to Lincoln's own city, and he placarded the side-walls, the trees, the fences, the barns, the unoccupied houses, and all other places where they would stick with yellow posters, until the very sky had the tint of an approaching cyclone. And not content with adhering to this mysterious alleged right to the collocation "Brown's Iron Bitters," they finished up with the word "tonic" in quite observable type, and in a manner calculated to deceive and confuse the public. This was unkind and exasperating, but not unlawful. Complainant had, and has, the technical legal right to use the word "tonic" as descriptive of a quality of its remedy. Lincoln had the same right, *and in morals a better right*, since it was a large distinctive part of his descriptive appellation.

Now, if Mr. Lincoln had been thoroughly imbued with the spirit of the "Sermon on the Mount," he would have hunted up Jackson and "turned to him the other cheek also" by most lavish and hospitable entertainment. But he was simply human, and he in turn ordered out posters, without, however, any direction as to color or size of the posters, only drawing up the order of the words. Yellow seems to be (testimony of Lincoln and Schwabe, R. 79, 80, 81, 82, 101 and 102) the color for posters. So yellow they were.

If Lincoln had desired to adopt the complainant's style of advertising in using the word "tonic' as an *alias*, he would have said at the end "The Best Bitters."

It is clear that the complainant desired that a confusion should arise, and did what it could to bring it about, although with but little success. Mr. Lincoln has been so determined to avoid confusion by any act of his, that he abondoned the use of the poster, when his attention was called to the similarity, although under no legal or moral obligation to do it; the abandonment and the apology should have come from the complainant.

3rd. Counsel in the court below undertook to argue that Lincoln & Brown, *malo animo*, undertook to describe their remedy as "Brown's Iron Tonic." All the points made by counsel on this head have been sufficiently considered by us. Counsel has an "up-hill" task in the light of a comparison of these two preparations, and the other evidence in the case to convince the court that Lincoln and Brown ever had any fraudulent purpose in adopting the phrase "Brown's Iron Tonic." Fraud in such cases consists in making two things similar, not in making them dissimilar. The fraudulent trader will indeed try to make differences, but they will be colorable in character. In the large features the similarity will always appear. In this case in every noticeable feature there is no resemblance, but striking differences. Indeed, there is no resemblances at all in the broad lineaments of the label.

Counsel in abstract of testimony in court below called attention to certain similarity of language between the language of recommendation of what the medicine is calculated to cure or relieve. But this part of the label is also opposed to complainant's in type, arrangement and all its details. Such portions of labels are rarely read, and the patient, who does read such parts of labels, would thereby,

by such familiarity with the same, be made still more acquainted with the other distinguishing features of two labels, which are the features by their character most calculated to impress the ordinary observer.

It is not claimed, or attempted to be shown, that the commendatory language of one label is any more true than the other,

One trader has as much right as another to get up a remedy for dyspepsia or ague and use the common stock of language belonging to the race to claim that it will cure. Indeed, it is almost impossible to avoid sameness of language in addressing people of all classes. There is nothing in this, and counsel barely, if at all, refers to it in his argument. See 101 U. S., Man. Co. *v.* Trainer.

It is argued that complainant's predecessors had advertised "Brown's Iron Bitters" extensively before Lincoln & Brown adopted their label, and that they must have known of it. This is immaterial, since their label is wholly and absolutely different. What does it signify whether they know about complainant's label, or not, if they did not counterfeit it, as counsel, at the hearing, practically admitted they did not?

But as matter of fact, there is no evidence, that Lincoln & Brown, or either of them, had ever seen complainant's label. They both say they had not, and the *only* evidence, that they had an *opportunity* even, prior to the adoption of their label, is that Mr. Powell testifies they paid a bill for advertising in Little Rock, October 24th, 1881. There is no evidence of any witness that any such advertising was in fact done, much less its character or extent. And there is still less any evidence to show that Lincoln &

Brown saw any such advertising. Brown & Lincoln went into partnership in May, 1881. Brown had intended this very thing before while traveling. He went to Little Rock personally in September, 1881, and at once got up his formula and his label. If he adopted any idea it was Harter's, the sale of which first attracted his attention and caused his resolution to get up a tonic. He had but to get up his formula, his label, and describe the remedy as "Brown's Iron Tonic," instead of Harter's, not, however, imitating Harter's label.

Counsel in the court below suggested several appellations, which Lincoln & Brown might have used, but did not. So they might. They could have used Lincoln's name alone, but Brown was the man who first thought of it, who persisted in it, and from whose name the firm expected to get the most sales from his large circle of acquaintances. Why did not the Brown Chemical Company make these suggestions in their letter of August 28th, 1882? It was explained to them in the Lincoln-Brown letter of August 24th, 1882, why Brown's name was used.

Brown's name was not concealed. It was well known that he was a member of the firm. His name appears in recorded trade-mark at Washington (on file as Exhibit 7, to Lincoln's deposition).

Complainant's afterthought (by the aid of its able counsel) seems to be better than its forethought.

If Lincoln & Brown had really intended to get the benefit of complainant's advertisements and reputation (as Rushton was allowed to do lawfully of Ayer's Cherry Pectoral, 7th Daly, p. 9, *supra*), they would have fallen naturally into many more imitations of complainant's label than they did.

Fraud has its natural laws as well as honesty. To make the label unlike complainant's, as they did, was to act honestly. A fraudulent purpose would have irresistibly made them alike. Of course, the two words, "Brown" and "iron" were alike, and they were bound to be alike if used, but notice on the first of the Brown's Iron Tonic label how dissimilar even these common words are used.

In Brown's Iron Bitters we have the name "Brown" separated by the lion and the bar and by considerabe space from the word "iron." In its turn the word "iron" is separated from the word "bitters" by a circle of white ground and a female figure holding up a bottle of the bitters, with the half encircling words "happiness and health." All this occupies half the length of one side of the label, all crossed by four red lines. "Brown's Iron Tonic" has no lion, no bar, no joyous female, no health, no happiness (although it causes them all). The words "Brown's Iron Tonic" are uncomfortably crowded together at the top, and the boldly distinctive letters "B. I. T." below them. Let us suggest to counsel, that genuine defrauders would not have simulated after this fashion. Fraud is truer to itself than that.

Counsel cites in court below under this head a few cases, making liberal extracts. Quotations without the facts of the particular case rarely aid the court, and may mislead. We, therefore, take the liberty in all of Mr. Cox's quotations of briefly stating the facts.

The 11th Federal Reporter was a case, where the name Rogers, or Rogers & Sons with an arrow, by long use on spoons, forks and knives had got to be a warranty of the *workmanship*, and not merely the *sort* of goods. The de-

fendant corporation manufactured similar goods of *inferior* workmanship on which it placed the name of Rogers, or Rogers & Son with an arrow. The defendant called their corporation the Rogers & Spur Man. Co., and to get a *color* of right to use the name, got D. C. Rogers and George E. Rogers to join others in forming the corporation, the corporation paying the Rogers four cents a dozen for the use of their name. *These Rogers had never learned or practiced the silver-plating business.* Here was a case of deliberate fraud, by endeavoring to appropriate the reputation and good will of a rival in business. It is parallel in no sense to this case, although we think hardly in harmony with 13 Wall., Canal *v.* Clark, and 101 U. S., Manufacturing Co. *v.* Trainer.

In Singer Company *v.* Wilson Singer Manufacturing Company, 3 App. Cases, 376, the plaintiff manufactured and sold sewing machines under the name of the inventor Singer. The defendant Wilson, with no right to the name Singer, simulated the machine and applied the name Singer.

We do not understand counsel to question the right of Lincoln to apply the name Brown to the tonic, because Mr. Brown is no longer a member of the firm of Brown & Lincoln. Lincoln uses the name as assignee of Brown or purchaser of his partner's, Brown's, interest in the firm of Lincoln & Brown, and especially in this remedy. If such a position was taken, it would be overthrown by the decisions of the Supreme Court already cited.

In McLean *v.* Fleming, 96 U. S., the use of the label had by successive purchases traveled down through many firms and changes in firms (pp. 245 and 246) until it fell into the

defendant Fleming's hands, who was far removed from Dr. Charles McLane, the original proprietor.

In 10th Otto, 617, Kidd *v.* Johnston, the right to use the name by successors in business or by operation of law was recognized.

Also, see 8th Federal Reporter, 29;
13th Blatchford, 44.

In Gillett *v.* Hall (cited in Browne on Trade-marks, sec. 425) it was decided that a man might transfer to his partner the right to use his name as applicable to a medicinal preparation theretofore manufactured and sold by the firm.

The reason is apparent. Lincoln by his partnership with Brown became by means of the money and energy of the partnership, expended in putting "Brown's Iron Tonic" before the public, equally entitled to the result of this expenditure of money and effort, and by his purchase from Brown became entitled to the ***whole*** result and with the consent of Brown, or by virtue of the purchase of his partner's interest in the preparation, became entitled to get the benefit of what had been accomplished by them jointly, which could only be done by continuing the manufacture and sale under the same general descriptive designation, he advising the public as he does on the face of the label that he alone manufactures the remedy.

The complainant a corporation itself, maintains its right to Brown's Iron Bitters, by purchase from the old partnership, which it is bound to do to sustain its claim of prior use, since the corporation was not formed until April, 1884, nearly three years after Lincoln & Brown had begun to manufacture and sell Brown's Iron Tonic. Both com-

plainant and Lincoln are assignees or purchasers claiming through their respective vendors.

In 27th Federal Reporter, the plaintiff published Johnson's selections of stories, etc., under "Chatterbox" (which was an arbitrary word and the subject of a valid trade-mark). The defendants published a book of stories (not same), using the word "Chatterbox," with same method of selection and illustration; same square form, same style of binding, vignette, name on cover, etc. The injunction was plainly right. This was a counterfeit to the smallest detail.

In Sawyer *v.* Horn, 1st Federal Reporter, p. 24, the plaintiff, for twenty years, had manufactured a bluing. He had adopted a peculiar label, also a new and peculiar form of package or box to contain the bluing. The defendant manufactured bluing and put it up in boxes, having same appearance of plaintiff's as to label and form of boxes. It was also alleged that the defendant's goods were inferior to plaintiff's.

The defendants were properly enjoined.

In 42 L. T. R. U. S. 851, Massam *v.* W. Thorley Cattle Food Company (from which counsel made extended quotations), the plaintiffs were executors of one Joseph Thorley, who, in his lifetime, had invented a cattle condiment and manufactured and sold it, using the descriptive title of "Thorley's Food for Cattle." His executors, under his will, continued to carry on the business and sold the same preparation described in the same way. J. H. Thorley, brother of Joseph Thorley, after his brother's death, formed a company called "J. W. Thorley's Cattle Food Company," which manufactured and sold a cattle

food under the same description—"Thorley's Food for Cattle."

The packets in which this company put its food were of the same size, shape, and wrapped in the same colored paper, as those used by Joseph Thorley's executors. The injunction was founded on the fact, that the circumstances noted established a fraud on the part of the defendant in selling his product as that of the plaintiff's. With this explanation of the facts, the language cited by counsel becomes harmless to the defendants in this case.

In Burgess *v.* Burgess, 3 De G. M. & G, 896 (cited in opinion of Massam *v.* Thorley, and approved, although distinguished from the Thorley case) the plaintiff's father had carried on for many years the business of making and vending fish and other sauces. In 1800 his son (the plaintiff) was taken into the business, and father and son continued in it until 1820, and from that time to 1853 the son carried on the same business.

John Burgess (the father) was the first inventor, maker and seller of a sauce called Essence of Anchovies, which description was used on the label in connection with their name, Burgess (p. 900 of report). The defendant, William Harding Burgess, son of the plaintiff and grandson of the older John Burgess, had worked for the plaintiff, his father, for thirty years in the business. In 1851 he started the same business for himself, and manufactured and sold a fish sauce describing it as "Burgess' Essence of Anchovies" and using almost the same identical label as his father did, and recommending it in almost the same language. The injunction was denied. Lord Justice Bruce said: "All the Queen's subjects may, if they wish

to, manufacture and sell pickles and sauces, and *not the less* that their fathers have done so before them. All the Queen's subjects have a right to sell their articles in their own names, and not the less so, because the names of their fathers. Nor is there anything else, that this defendant has done in question before us. He follows the same trade, that his father follows and has long followed, namely, that of a manufacturer and seller of pickles, preserves and sauces, among them one called 'Essence of Anchovies.' He carries on business under his own name, and sells his essence of anchovies as 'Burgess' Essence of Anchovies,' which in truth it is."

"If any circumstance of fraud now material had occurred, had accompanied, and were continuing to accompany the case, it would stand very differently. The whole ground of complaint is the great celebrity, which during many years has been formed by the elder Mr. Burgess' Essence of Anchovies. That does not give him exclusive right to such a monopoly, such a privilege as to prevent any man from making 'Essence of Anchovies,' and selling it under his own name."

Lord Chief Justice Turner concurred, saying: "Look-
"ing at the labels before us I think it is clear, that since
"the order made by the Vice-Chancellor, there has been
"no representation on the part of the defendant, that the
"goods which he is selling are the goods manufactured by
"plaintiff."

In Witherspoon *v.* Currie, 5 H. L., the plaintiff manufactured and sold a starch and used the words, "Glenfield Starch" upon the label, Glenfield was not (as noticed by the Lord Chancellor) a parish, a hamlet, or even a district, but an estate where plaintiffs manufactured their starch.

The defendant Currie, a manufacturer of starch, also put the word "Glenfield" on his label, and imitated the plaintiff's label in all its general features. An injunction was thought to be proper by the House of Lords on account of these circumstances of actual fraud.

In Hudson *v.* Osborne, 39 L. J. Ch. U. S. 79, the defendant Osborne had kept a house and shop called "Osborne House." He went into bankruptcy, and his property and good will were sold by his assignees. Osborne afterwards undertook to set up another house at the same city or town under the same name "Osborne House." It was held that he could not do it against the purchaser at the assignee's sale of his old house, who by that purchase had acquired the good will of the business. This was a good will case and not a trade-mark or a trade-label case.

In Massam *v.* Thorley, 14 Ch., D. 748, the same decision was made on the ground of fraud in the label as in 42 L. T. R. *supra*. James, L. J., saying: "We cannot pro-"hibit them (the defendants) from using the name (Thor-"ley) if they use it *in a way* not calculated to mislead the "public."

This is what Lincoln & Brown did, and what Lincoln is now doing. The "Brown's Iron Tonic" label is in no way calculated to mislead the public.

The case in 11th Federal Reporter, 495, W. Rogers Man. Co. *v.* Rogers & Spur Man. Co. we have already noticed. That was a case of gross fraud in which goods of an inferior quality were attempted to be sold as the goods of the plaintiff, which had under the words used acquired great celebrity for workmanship; the Rogers, who were

members of the defendant corporation, never having followed the trade of silver-plating, and were simply selling the use of their name.

In Amoskeog Manufacturing Co. *v.* Spear, 2 Sandf. S. C. 599, the plaintiffs were manufacturers of ticking, and used a printed label on which they made a certain arrangement of the words "Amoskeog Manfg. Co. Power Loom Yds. and the letters 'A. C. A.'" The defendants also manufactured ticking, and they got up a label on which they put the letters "A. C. A." in corresponding position with a similar border, with the same colored label, and same general features, which, as the court found from these striking correspondences, and other evidences, was intended fraudulently to simulate the plaintiff's name.

It might be suggested that this case in many respects does not agree with the doctrine of the Supreme Court of the United States, in 13th Wall., Canal Co. *v.* Clark, or 101 U. S., p. 51, Manufacturing Co. *v.* Trainer. But it does not hurt the defendants here, since the court proceeded wholly on the grounds of fraud by means of a simulated label.

In 24th Federal Reporter, 151, Anheuser-Busch Brewing Company *v.* Piza, the plaintiff manufactured beer at St. Louis and labeled its beer "St. Louis Lager Beer," which beer under that name had acquired a great reputation. The defendant Piza was a shipper of beer *at New York*, and falsely and fraudulently labeled his beer (not manufactured in St. Louis) "St. Louis Lager Beer." It was held that while the plaintiff could not have a trade-

mark in the words "St. Louis" he should be protected against the false and fraudulent representations of defendant.

In Lee *v.* Haley, L. R. 5 Ch. 161, the plaintiff had carried on business for many years in Pall Mall, under the name, "Guinea Coal Co." The words were arbitrary as used, and neither word of the phrase was the name either of plaintiff or defendant. The defendant set up in the same business in the same place and used the same name, "Guinea Coal Co." in connection with the words Pall Mall.

This case is not like the one now being considered in any respect.

In 45 L. T. R. N. S. 54, Reed *v.* Richardson, the plaintiff was a manufacturer of beer. His trade-mark was a bull-dog's head on a dark background. The plaintiff's beer, from this trade-mark, got to be called "Dog's Head Beer."

The defendant adopted the same trade-mark—a dog's head, with great resemblance in the general features of the label.

In 7 App. Cases, the plaintiffs were importers of Turkey red yarn, and adopted a peculiar label, with trade-mark devices.

The defendants adopted a label similar in shape, color and appearance, having all the distinguishing features of the plaintiff's label and trade-mark.

In 43 L. T. R. N. S. the plaintiffs were manufacturers of alpaca, mohair and worsted goods. They adopted and registered a trade-mark. The defendants adopted a similar one, which was enjoined.

Cases cited from Cox's Manual of Trade-Marks (p. 26 of brief) are all controversies over valid trade-marks as such, or simulated labels.

We submit there is nothing in counsel's mere side suggestion that "Brown's Iron Tonic" should be called "Lincoln's Iron Tonic," because Mr. Lincoln says he has made some slight changes in the preparation. It is not disclosed what the slight changes referred to are, and it is immaterial. Brown first resolved to get up a tonic when he should go into business for himself. Instead of going into a business by himself, he bought into a business. His name was advertised as a member of the firm, information was given to Brown Chemical Company that Brown was a partner, and at last the firm was styled Lincoln & Brown. Brown's name alone was used, because it was his idea to manufacure and sell such a tonic, and because he was well known to the trade. Money and energy were expended by Lincoln & Brown in manufacturing, putting before the public and selling the preparation. It became known as "Brown's Iron Tonic" as distinguished from "Brown's Iron Bitters," and so far as the Southwest is concerned, introduced at about the same time. The good will of the descriptive phrase "Brown's Iron Tonic" became the joint property of the two partners, Lincoln and Brown. Brown sold his interest to his partner who became thereby the sole owner of this good will reputation, and entitled to enjoy it, certainly so long as he carried on the same business at the same place, and so long at least as the substantial identity of the remedy remained. To deprive Lincoln of the same right he would have had to manufacture, and sell, the

remedy and to improve it in good faith as he saw fit, the same as Lincoln & Brown might have done at the suggestion of either partner, would be to take away from Lincoln at the instance, not of Brown but of a stranger, what he has paid valuable consideration for, and in furtherance of the sale of which he has expended what is to him a large sum of money (although insignificant to complainant).

The public and the complainant are both advised on the face of the label, that the tonic is warranted and sold by C. J. Lincoln alone. In this there is no fraud, no concealment. Brown has been paid for his interest in the remedy and for the use of the phrase "Brown's Iron Tonic" (not as a trade-mark), and the public is informed that Brown is no longer personally interested in the business, which, however, is carried on at the same place. Brown has not gone out of the play Brown's idea, skill and efforts, as they entered into the reputation of Brown's Iron Tonic, still exist in this remedy, and always will so long as it remains substantially the same, or even though it should at some future time be so much improved as to lose most of its original proportions, so long as it shall be used for the same ills. The law encourages improvements. Mere improvement does not change identity.

In using the descriptive designation "Brown's Iron Tonic," Mr. Lincoln is only taking advantage of a title which he had helped make known in the trade. In 1st Mo. App. this doctrine was expressly upheld (p. 241) in Probasco *v.* Bouyon. In that case Probasco & Oakes had been partners in manufacturing and selling candies under the name "Oakes' Candies." Oakes sold out to Probasco his

interest in the firm and good will of the business. Oakes afterwards undertook to engage in the same business and to call his candies "Oakes' Candies." He was enjoined, just as Brown would be if he undertook to manufacture and sell "Brown's Iron Tonic," although no such attempt has been or will be made, as in his deposition he recognizes the right of Lincoln, under his sale of his interest in the business and the medicine to him, to continue the manufacture and sale of the remedy in the same way as they had done while partners.

The bill was properly dismissed for the reasons which have been urged in this brief:—

1st. The complainant has no exclusive right to the words, "Brown's Iron."

2d. The complainant has no exclusive right to the combination of words, "Brown's Iron Bitters," and if it had, the combination, "Brown's Iron Tonic," is distinct and different, and is shown to be so regarded.

3d. The label of the "Brown's Iron Tonic" is wholly individual and distinguished from the label of "Brown's Iron Bitters."

4th. There is no fraud in fact, of any kind, shown against Lincoln & Brown, or Lincoln, but quite the contrary.

5th. The complainant inself, in 1882, declared that there was no conflict between "Brown's Iron Bitters" and "Brown's Iron Tonic," which is conclusive evidence against its present claim to an exclusive right to the phrase "Brown's Iron Bitters." and in view of the fact that Lincoln & Brown were induced to believe that no such claim

could be or would be made, and so went on to manufacture the "tonic," making a change in the color of the wrapper to make the distinction still more striking; and in view of the further fact that Lincoln subsequently to this disclaimer of conflict or objection bought out Brown and paid him a valuable consideration for his interest in the remedy, the complainant should now be held to be estopped from asserting the claim it now does to the injunction.

Respectfully submitted,

J. E. McKEIGHAN,

Of Counsel for Respondents.

PART II.

STATEMENT OF THE INDEBTEDNESS OF THE CITY OF NEW ORLEANS, JUNE 30, 1872.

Name.	Letter.	Issued for.	Amount.	Interest.	Capital due. Year.	Capital due. Month.	Interest due in each month. January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	Provision for liquidation of capital and interest.
	.....	Municipality No. 1	$2,500	7 per cent.	1876	May					$87 50						$87 50		Act No. 73, approved April 26, 1872, section 15, provides for an annual levy of a city debt tax. See extract at foot. No special provision for the payment of the capital due 1873, which may be exchanged, however, at maturity for new consolidated bonds.
	.....	Municipality No. 3	350	7 per cent.	1877	May					12 25						12 25		
	.....	Old corporation	336,000	5 per cent.	1873	June						$8,400 00						$8,400 00	
Consolidated loan	J	Consolidated city of 1852	225,000	6 per cent.	1892	January	$6,750 00						$6,750 00						$650,000 is to be levied annually, apart from other taxes, to meet the interest and capital of these bonds; the surplus proceeds of this tax, after paying the current interest, to be applied to purchasing the bonds from lowest offerer.
	M	Consolidated city of 1852	75,000	6 per cent.	1892	March			$2,160 00						$2,160 00				
	L	Consolidated city of 1852	12,000	6 per cent.	1892	April				$360 00						$360 00			
	G, H	Consolidated city of 1852	220,000	6 per cent.	1892	May					6,600 00						6,600 00		
	A	Consolidated city of 1852	70,000	6 per cent.	1892	June						2,100 00						2,100 00	
	J, A, I	Consolidated city of 1852	4,040,000	6 per cent.	1892	July	121,470 00						121,470 00						
	K, L	Consolidated city of 1852	48,000	6 per cent.	1892	August		$1,440 00						$1,440 00					
Railroad loan	B	Jackson Railroad Company	198,000	6 per cent.	1875	January	5,940 00						5,940 00						See at foot act 73, approved April 26, 1872. No special provision for payment of capital maturing 1874, which may be exchanged, however, for new consolidated bonds. See section 13.
	B	Jackson Railroad Company	100,000	6 per cent.	1875	March			3,000 00						3,000 00				
	B	Jackson Railroad Company	1,694,000	6 per cent.	1874	May					50,820 00						50,820 00		
	C	Opelousas Railroad Company	150,000	6 per cent.	1875	January	4,500 00						4,500 00						
	C	Opelousas Railroad Company	75,000	6 per cent.	1875	April				2,250 00						2,250 00			
	C	Opelousas Railroad Company	1,125,000	6 per cent.	1874	May					33,750 00						33,750 00		
	C	Opelousas Railroad Company	147,000	6 per cent.	1874	September			4,410 00						4,410 00				
Pontchartrain railroad loan	D	Pontchartrain Railroad Company	133,000	6 per cent.	1884	January	3,990 00						3,990 00						See at foot act 73, approved April 26, 1873. For interest purposes a percentage of licenses is annually set apart.
Water-works loan	W	Water works	1,393,400	5 per cent.	1899	January	34,835 00						34,835 00						See at foot act 73, approved April 26, 1872.
One-million loan	E	One-year loan	300	10 per cent.	Past due	October, 1869													Extinguished this year.
	E	Two-year loan	100	10 per cent.	Past due	October, 1870													
	E	Three-year loan	450	10 per cent.	Past due	October, 1871													
	E	Four-year loan	250,000	10 per cent.	1872	October										12,500 00			
Seven per cent. loan of 1869	Y	City notes	2,046,000	7 per cent.	1894	March			71,610 00						71,610 00				See at foot act 73, approved April 26, 1872.
	X	Registered bills	806,500	7 per cent.	1894	March			28,227 50						28,227 50				
Seven per cent. loan of 1870	N	City notes	3,000,000	7 per cent.	1895	June						105,000 00						105,000 00	
	N	Warrants, etc																	
Wharf loan	O	Wharf-improvement bonds	804,000	7-30 per ct.	1880	December						29,346 00						29,346 00	Levee dues pledged for interest and capital, one one-hundred and twentieth of the gross amount of bonds issued, is extinguished monthly by purchase.
	.....	Seven-thirty wharf certificates	1,354	7-30 per ct.															
Street-improvement loan	Q	Paving and repairing streets	230,000	7-30 per ct.	1911	August		8,395 00						8,395 00					See at foot act No. 73.
Ten per cent. loan of 1871	P	Bonds issued for deficit and old claims	1,134,450	10 per cent.	1881	April			56,722 50								56,722 50		One-tenth of gross amount of bonds issued is to be extinguished annually by purchase. The act of the Legislature authorizing the issue, together with act 73, approved April 26, 1872, provides for a special levy to meet interest and one-tenth of the capital annually.
	.....	Bank of New Orleans, floating debt certificates	12,486																
	.....	Seven-thirty administration certificates	6,015																
	.....	Ten per cent. certificates	1,748																
		Drainage series:																	
	.....	Excavations, etc., by Mississippi and Mexican Gulf Ship Canal Company	282,719	7 per cent.															
New consolidated loan	.....	Drainage certificates to same	99,441	8 per cent.															Bonds of this loan, authorized in section 13, act No. 73, not yet engraved. The amounts stated herein indicate outstanding convertible warrants. The drainage tax is dedicated to the drainage series of this loan. The capital and interest of the general series are to be met under the provisions of section 15 of said act.
		General series:																	
	.....	New seven-thirty certificates	199,672	7-30 per ct.															
	.....	Deficit of 1871 and conversion of other bonds	269,597	7 per cent.															
	.....	Fink Asylum	48,000	6 per cent.	1910	October				1,440 00						1,440 00			See at foot act 73, approved April 26, 1872. Those bonds are inalienable. The McDonough interest is dedicated to the support of the public schools, the interest on the Sickles legacy to maintaining a free dispensary.
Trust fund	.....	McDonogh school	109,000	6 per cent.	1910	October				3,270 00						3,270 00			
	.....	Sickles legacy	16,884	Indefinite															
Jefferson City loan	J	Jefferson City No. 1—132	66,000	8 per cent.	1887	January	2,640 00						2,640 00						
	I	Jefferson City No. 1—400	200,000	8 per cent.	1897	June						8,000 00						8,000 00	See at foot act No. 73.
	.....	Jefferson City No. 1—29	29,000	8 per cent.	1900	January	1,160 00						1,160 00						
Coupons due and not yet presented for payment	.....	On consolidated bonds	$12,884																These are coupons on the foregoing bonds. Ample funds are now in the Louisiana Savings Bank to meet them whenever presented.
	.....	On railroad bonds	23,920																
	.....	On Pontchartrain railroad bonds	180																
	.....	On water-works bonds	232																
	.....	On ten per cent. bonds of 1868	2,997																
	.....	On seven per cent. bonds of 1869	18,396																
	.....	On seven per cent. bonds of 1870	7,448																
	.....	On wharf-improvement bonds	465																
	.....	On Fink asylum bonds	1,440																
	.....	On McDonogh school bonds	3,270																
	.....	On Jefferson City bonds	1,660																
			72,882	None															
Temporary	.....	Louisiana Savings Bank	300,000	8 per cent.			12,000 00						12,000 00						Current revenue.
	.....	Commissioners New Orleans park, including balance of park tax not paid over	33,656	None															
	.....	Public schools	41,846	None															
	.....	Sundry open accounts	5,803	None															
	.....	Five-eighths per cent. excess over two per cent. collected on a portion of the assessment-rolls of 1870 and to be refunded to tax-payers	76,773	7 per cent.															
Unpaid appropriations	.....	Certified	1,022,599	None															
	.....	Uncertified	155,000	None															
Bills payable of various maturities			8,760	None															
Total			$21,381,285				$193,285 00	$9,835 00	$109,407 50	$64,042 50	$91,269 75	$152,846 00	$193,285 00	$9,835 00	$109,407 50	$76,542 50	$91,269 75	$152,846 00	

Act No. 73 of the Legislature, approved April 26, 1872, reads as follows in sections 13, 14, and 15:

Sec. 13. Be it further enacted, etc., That for unbonded debts existing December 31, 1871, and unpaid at the time of the passage of this act, or caused by receipts of certificates of 1871, for revenues proper of 1872, and for excavations and levees, drainage machinery, and revetments authorized by law or required for the protection of the city from overflow or inundation the city may issue from time to time, as they may be required, bonds of the denominations of five hundred and one thousand dollars, having fifty years to run and bearing seven per cent. interest, principal and interest payable in gold in New York or New Orleans, and at any other points that the council may designate, with quarterly coupons, and that the bonds thus issued shall be called the new consolidated debt of New Orleans. No bonds shall be issued but by authority of the council, nor for a lower rate than ninety cents on the dollar; all issued for excavations and levees, authorized by act No. 30 of 1871, or by drainage laws previously enacted, shall be marked "drainage series," and all taxes collected for drainage and not required for the payment of drainage warrants shall be devoted to the purchase from the lowest bidder of bonds issued for drainage; no bid to be accepted above par, and the right reserved to the council to reject all unsatisfactory bids; and for other bonds of, the city not matured, bearing interest at not less than seven per cent., the city may exchange bonds of the new consolidated debt at such prices, not less than par, for the new consolidated debt bonds as may be found to the advantage of the city; but no exchange shall be effected except by consent and order of the council, publicly given, or ordinance fully authorizing the same. For all bonds fully matured and payable so soon as the term they were issued for shall have expired, and which the city shall not have available funds to pay in cash, the city may exchange new consolidated bonds, at the rate of not less than ninety cents on the dollar, on demand of the holders of the bonds so matured. And it is furthermore enacted that at no time shall the face of the bonded debt outstanding and unredeemed added to the certified debt of every form exceed twenty-three millions of dollars, and all issue of bonds or evidences of indebtedness whatever in excess of said amount shall be unlawful, and shall not import or convey any obligation. And if any person, under color of office or otherwise, shall issue any bond or warrant in violation of this section he shall be prosecuted criminally by indictment or information, and upon conviction shall be condemned to imprisonment for two years; and any person negotiating or attempting to negotiate such bond or warrant shall be considered an accessory to the fact and subject to the same punishment as the said offender.

Section 14. Be it further enacted, etc., That within the months of November and December, 1872, and annually thereafter, the council shall adopt estimates of receipts and expenditures (the latter including police and excluding schools) for the ensuing year. The estimate of expenditures shall not be finally adopted until one week shall have elapsed after final adoption of the estimate of revenues, and it shall not exceed the same.

Sec. 15. Be it further enacted, etc., That the council, after the adoption of the estimate, shall proceed to levy the annual taxes required, to wit: First. The city debt tax, which shall be based upon the detailed estimate of the sinking funds and interest falling due. For all bonds for which no other retiring provision exists by law an estimate shall be included of not less than two nor more than ten per cent. of the face of the bonds outstanding of any of the several issues, which shall be applied to the retiring of bonds offered at the most advantageous rates; no bid to be accepted higher than par and the right reserved to reject all bids. No limit other than herein laid down shall apply to this tax, which is hereby declared a vested right of the bondholders interested. Second. A tax for current city expenses, including police and exclusive of interest and schools. This tax shall in no year exceed one and a quarter per cent. upon the assessed value of real, personal, and mixed property. These taxes shall bear the name of the year in which they shall be collectible, and the assessment upon which they shall be made shall be termed the assessments for the said year.

PART II.

STATEMENT OF THE INDEBTEDNESS OF THE CITY OF NEW ORLEANS, DECEMBER 31, 1872.

Name.	Letter.	Issued for.	Amount.	Interest.	Capital due. Year.	Capital due. Month.	Interest due in each month. January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	Provision for liquidation of capital and interest.
Consolidated loan	.....	Municipality No. 1	$2,500	7 per cent.	1876	May					$87 50						$87 50		Act No. 73, approved April 26, 1872, section 15, provides for an annual levy of a city debt tax. See extract at foot. No special provision for the payment of the capital due 1873, which may be exchanged, however, at maturity for new consolidated bonds.
	.....	Municipality No. 3	350	7 per cent.	1877	May					12 25						12 25		
	.....	Old corporation	336,000	5 per cent.	1873	June						$8,400 00						$8,400 00	
	J	Consolidated city of 1852	224,000	6 per cent.	1892	January	$6,690 00						$6,690 00						
	M	Consolidated city of 1852	70,066	6 per cent.	1892	March			$2,100 00						$2,100 00				
	L	Consolidated city of 1852	12,000	6 per cent.	1892	April				$360 00						$360 00			
	G, H	Consolidated city of 1852	209,000	6 per cent.	1892	May					6,270 00						6,270 00		$650,000 is to be levied annually, apart from other taxes, to meet the interest and capital of these bonds; the surplus proceeds of this tax, after paying the current interest, to be applied to purchasing the bonds from lowest offerer.
	A	Consolidated city of 1852	69,000	6 per cent.	1892	June						2,070 00						2,070 00	
	J, A, I	Consolidated city of 1852	3,819,000	6 per cent.	1892	July	114,570 00						114,570 00						
	L, L	Consolidated city of 1852	42,000	6 per cent.	1892	August		$1,260 00						$1,260 00					
Railroad loan	B	Jackson Railroad Company	198,000	6 per cent.	1875	January	5,940 00						5,940 00						
	B	Jackson Railroad Company	100,000	6 per cent.	1875	March			3,000 00						3,000 00				
	B	Jackson Railroad Company	1,694,000	6 per cent.	1874	May					50,820 00						50,820 00		See at foot act 73, approved April 26, 1872. No special provision for payment of capital maturing 1874, which may be exchanged, however, for new consolidated bonds. See section 13.
	C	Opelousas Railroad Company	150,000	6 per cent.	1875	January	4,500 00						4,500 00						
	C	Opelousas Railroad Company	75,000	6 per cent.	1875	April				2,250 00						2,250 00			
	C	Opelousas Railroad Company	1,125,000	6 per cent.	1874	May					33,750 00						33,750 00		
	C	Opelousas Railroad Company	147,000	6 per cent.	1874	September			4,410 00						4,410 00				
	D	Pontchartrain Railroad Company	133,000	6 per cent.	1884	January	3,990 00						3,990 00						See at foot of act 73, approved April 26, 1873. For interest purposes a percentage of licenses is annually set apart.
Seven per cent. loan	W	Water works	1,393,400	5 per cent.	1899	January	34,835 00						34,835 00						
Loan of 1869	Y	City notes	2,046,000	7 per cent.	1894	March			71,610 00						71,610 00				See at foot of act 73, approved April 26, 1872.
Seven per cent. loan of 1870	X	Registered bills	806,500	7 per cent.	1894	March			28,227 00						28,227 00				
	.....	City notes, warrants, etc.	3,000,000	7 per cent.	1895	June						105,000 00						105,000 00	See at foot act 73, approved April 26, 1872.
Wharf loan	O	Wharf-improvement bonds	802,000	7-30 per ct.	1880	December						29,273 00						29,273 00	
	.....	Seven-thirty wharf certificates	1,354																Levee dues pledged for interest and capital, one one-hundred and twentieth of the gross amount of bonds issued, is extinguished monthly by purchase.
Street-improvement loan	Q	Paving and repairing streets	291,000	7-30 per ct.	1911	August		10,621 50						10,621 50					See at foot of act No. 73.
	P	Bonds issued for deficit and old claims	1,147,150	10 per cent.	1881	April				57,357 50						57,357 50			One-tenth of gross amount of bonds issued is to be extinguished annually by purchase. The act of the Legislature authorizing the issue, together with act 73, approved April 26, 1872, provides for a special levy to meet interest and one-tenth of the capital annually.
Ten per cent. loan	.....	Floating-debt certificates	8,882																
	.....	Seven-thirty administration certificates	4,053																
	.....	Ten per cent. certificates	411																
One-million loan	E	Four-year loan	106,300	Past due															
	.....	Drainage series	287,000	7 per cent.	1922	July				5,022 50			5,022 50			5,022 50			
	.....	Warrants issued to Mississippi and Mexican Gulf Ship Canal Company and others	389,785	7 per cent.						6,821 24			6,821 24			6,821 24			
	.....	General series	326,000	7 per cent.	1922	July				5,705 00			5,705 00			5,705 00			Bonds of this loan, authorized in section 13, act No. 73. The amounts stated herein indicate outstanding convertible warrants. The drainage tax is dedicated to the drainage series of this loan. The capital and interest of the general series are to be met under the provisions of section 15 of said act.
Gold consolidated bonds	.....	Warrants issued for deficit of 1871 and conversion of other bonds	854,088	7 per cent.						14,946 54			14,946 54			14,946 54			
	.....	Handed to Louisiana Savings Bank as pledge for the loan of	333,333	No interest.															
	.....	Three hundred thousand dollars, with		8 per cent.			12,000 00						12,000 00						
	.....	New seven-thirty certificates	83,337	7 30 per ct.															
Trust fund	.....	Fisk asylum	48,000	6 per cent.	1910	October				1,440 00						1,440 00			See at foot act 73, approved April 26, 1872. Those bonds are inalienable. The McDonough interest is dedicated to the support of the public schools, the interest on the Sickles legacy to maintaining a free dispensary.
	.....	McDonogh school	109,000	6 per cent.	1910	October				3,270 00						3,270 00			
	.....	Sickles legacy	16,885	Indefinite.															
Jefferson City loan	.....	Jefferson City No. 1—132	66,000	8 per cent.	1887	January	2,640 00						2,640 00						
	.....	Jefferson City No. 1—400	200,000	8 per cent.	1897	June						8,000 00						8,000 00	See at foot act No. 73.
	I	Jefferson City No. 1—29	29,000	8 per cent.	1900	January	1,160 00						1,160 00						
Coupons due and not yet presented for payment	.....	On consolidated bonds	$13,323 00																These are coupons on the foregoing bonds. Ample funds are now in the Louisiana National Bank of New Orleans to meet them whenever presented.
	.....	On railroad bonds	24,570 00																
	.....	On Pontchartrain railroad bonds	180 00																
	.....	On water-works bonds	567 50																
	.....	On ten per cent. bonds	855 00																
	.....	On seven per cent. bonds of 1869	8,888 40																
	.....	On seven per cent. bonds of 1870	8,534 75																
	.....	On wharf-improvement bonds	750 00																
	.....	On street-improvement bonds	1,095 00																
	.....	On million loan	750 00																
	.....	On Jefferson City bonds	2,300 00																
	.....	On Fisk asylum loan	5,760 00																
	.....	On McDonogh school	13,080 00																
	.....		80,394																
	.....	Interest on warrants for gold consolidated bonds due and not yet collected	33,528																
Temporary	.....	Public schools	29,462																Current revenue.
	.....	Sundry open accounts	735																
	.....	Five-eighths tax excess over two per cent. collected on a portion of assessment 1870, and to be refunded to tax-payers	30,211																
Unpaid appropriations	.....	Certificates of appropriation, balance outstanding	905,619																
	.....	Uncertified	376,841																
	.....	Balance tax warrants outstanding	12,410																
Bills payable of various maturities			22,510																
Total			$22,245,978				$186,325 00	$11,881 50	$109,347 00	$97,172 78	$90,939 75	$152,743 00	$218,820 28	$11,881 50	$109,347 50	$97,172 78	$90,939 75	$152,743 00	

Act No. 73 of the Legislature, approved April 26, 1872, reads as follows in sections 13, 14, and 15:

SEC. 13. Be it further enacted, etc., That for unbonded debts existing December 31, 1871, and unpaid at the time of the passage of this act, or caused by receipts of certificates of 1871, for revenues proper of 1872, and for excavations and levees, drainage machinery, and revetments authorized by law or required for the protection of the city from overflow or inundation the city may issue from time to time, as they may be required, bonds of the denominations of five hundred and one thousand dollars, having fifty years to run and bearing seven per cent. interest, principal and interest payable in gold in New York or New Orleans, and at any other points that the council may designate, with quarterly coupons, and that the bonds thus issued shall be called the new consolidated debt of New Orleans. No bonds shall be issued but by authority of the council, nor for a lower rate than ninety cents on the dollar; all issued for excavations and levees, authorized by act No. 30 of 1871, or by drainage laws previously enacted, shall be marked "drainage series," and all taxes collected for drainage and not required for the payment of drainage warrants shall be devoted to the purchase from the lowest bidder of bonds issued for drainage; no bid to be accepted above par, and the right reserved to the council to reject all unsatisfactory bids; and for other bonds of the city not matured, bearing interest at not less than seven per cent., the city may exchange bonds of the new consolidated debt at such prices, not less than par, for the new consolidated debt bonds as may be found to the advantage of the city; but no exchange shall be effected except by consent and order of the council, publicly given, or ordinance fully authorizing the same. For all bonds fully matured and payable so soon as the term they were issued for shall have expired, and which the city shall not have available funds to pay in cash, the city may exchange new consolidated bonds, at the rate of not less than ninety cents on the dollar, on demand of the holders of the bonds so matured. And it is furthermore enacted that at no time shall the face of the bonded debt outstanding and unredeemed added to the certified debt of every form exceed twenty three millions of dollars, and all issue of bonds or evidences of indebtedness whatever in excess of said amount shall be unlawful, and shall not import or convey any obligation. And if any person, under color of office or otherwise, shall issue any bond or warrant in violation of this section he shall be prosecuted criminally by indictment or information, and upon conviction shall be condemned to imprisonment for two years; and any person negotiating or attempting to negotiate such bond or warrant shall be considered an accessory to the fact and subject to the same punishment as the said offender.

SEC. 14. Be it further enacted, etc., That within the months of November and December, 1872, and annually thereafter, the council shall adopt estimates of receipts and expenditures (the latter including police and excluding schools) for the ensuing year. The estimate of expenditures shall not be finally adopted until one week shall have elapsed after final adoption of the estimate of revenues, and it shall not exceed the same.

SEC. 15. Be it further enacted, etc., That the council, after the adoption of the estimate, shall proceed to levy the annual taxes required, to wit: First. The city debt tax, which shall be based upon the detailed estimate of the sinking funds and interest falling due. For all bonds for which no other retiring provision exists by law an estimate shall be included of not less than two nor more than ten per cent. of the face of the bonds outstanding of any of the several issues, which shall be applied to the retiring of bonds offered at the most advantageous rates; no bid to be accepted higher than par and the right reserved to reject all bids. No limit other than herein laid down shall apply to this tax, which is hereby declared a vested right of the bondholders interested. Second. A tax for current city expenses, including police and exclusive of interest and schools. This tax shall in no year exceed one and a quarter per cent. upon the assessed value of real, personal, and mixed property. These taxes shall bear the name of the year in which they shall be collectible, and the assessment upon which they shall be made shall be termed the assessments for the said year.

STATEMENT OF THE INDEBTEDNESS OF THE CITY OF NEW ORLEANS, JUNE 30, 1873.

Name.	Letter.	Issued for—	Amount.	Interest.	Capital due. Year.	Capital due. Month.	Interest due in each month. January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.
	.....	Municipality No. 1	2,500 00	7 per cent.	1876	May					$87 50						$87 50	
	.....	Municipality No. 3	350 00	7 per cent.	1877	May					12 25						12 25	
	J	Consolidated city of 1852	223,000 00	6 per cent.	1892	January	$6,690 00						$6,690 00					
	M	Consolidated city of 1852	70,000 00	6 per cent.	1892	March			$2,100 00						$2,100 00			
	L	Consolidated city of 1852	12,000 00	6 per cent.	1892	April				$360 00						$360 00		
Consolidated loan	G, H	Consolidated city of 1852	209,000 00	6 per cent.	1892	May					6,270 00						6,270 00	
	A	Consolidated city of 1852	69,000 00	6 per cent.	1892	June						$2,070 00						$2,070 00
	J, A, I	Consolidated city of 1852	3,819,000 00	6 per cent.	1892	July	114,570 00						114,570 00					
	L	Consolidated city of 1852	42,000 00	6 per cent.	1892	August		$1,260 00						$1,260 00				
	.....	Old corporation	305,666 66	5 per cent.	1873	June 20						7,641 67						7,641 67
	B	Jackson Railroad Company	198,000 00	6 per cent.	1875	January	5,940 00						5,940 00					
	B	Jackson Railroad Company	100,000 00	6 per cent.	1875	March			3,000 00						3,000 00			
	B	Jackson Railroad Company	1,694,000 00	6 per cent.	1874	May					50,820 00						50,820 00	
Railroad loan	C	Opelousas Railroad Company	150,000 00	6 per cent.	1875	January	4,500 00						4,500 00					
	C	Opelousas Railroad Company	75,000 00	6 per cent.	1875	April				2,250 00						2,250 00		
	C	Opelousas Railroad Company	1,125,000 00	6 per cent.	1874	May					33,750 00						33,750 00	
	C	Opelousas Railroad Company	147,000 00	6 per cent.	1874	September			4,410 00						4,410 00			
Pontchartrain railroad	D	Pontchartrain Railroad Company	133,000 00	6 per cent.	1884	July	3,990 00						3,990 00					
Water works	W	Water works	1,393,400 00	5 per cent.	1899	January	34,835 00						34,835 00					
Seven per cent., 1869	Y	City notes	2,046,000 00	7 per cent.	1894	March			71,610 00						71,610 00			
	X	Registered bills	806,500 00	7 per cent.	1894	March			28,227 50						28,227 50			
Seven per cent., 1870	N	City notes, warrants, etc	3,000,000 00	7 per cent.	1895	June						105,000 00						105,000 00
Wharf improvement	O	Wharf-improvement bonds	754,000 00	7.30 per ct.	1880	December						26,389 50						26,389 00
Street improvement	Q	Paving and repairing streets	357,000 00	7.30 per ct.	1911	August		13,030 50						13,030 50				
	F	Bonds issued for deficit and old claims	1,162,550 00	10 per cent.	1881	April				58,127 50						58,127 50		
Ten per cent. loan	.....	Pledged to park commissioners	45,000 00															
	.....	Pledged to banks	420,000 00															
		Floating-debt certificates	7,529 05															
		Seven-thirty certificates	3,068 93															
		Ten per cent. certificates	213 56															
Million loan	E	Four-year loan (one million loan)	63,800 00	Past due						3,190 00						3,190 00		
Gold consolidated bonds	.....	Drainage series	865,000 00	7 per cent.	1922	July	15,137 50			15,137 50			15,137 50			15,137 50		
		Warrants issued to the Mississippi and Mexican Gulf Ship Canal Company and others	19,737 58															
Gold consolidated bonds	.....	General series	1,622,000 00	7 per cent.	1922	July	28,385 00			28,385 00			28,385 00			28,385 00		
		Warrants issued for deficit of 1871 and conversion of other bonds	212,995 44															
		Three-hundred-thousand-dollar loan	300,000 00	8 per cent.														
		New seven-thirty certificates	13,783 02															
		Fink Asylum loan	48,000 00															
		McDonogh School loan	109,000 00															
		Street assessment	6,450 00	7.30 per ct.	1883	February		735 42½						235 42½				
	.....	Jefferson City, Nos. 1 to 132	66,000 00	8 per cent.	1887	January	2,640 00						2,640 00					
Jefferson City loan	.....	Jefferson City, Nos. 1 to 400	200,000 00	8 per cent.	1897	June						8,000 00						8,000 00
	.....	Jefferson City, Nos. 1 to 29	29,000 00	8 per cent.	1900	January	1,160 00						1,160 00					
	.....	On consolidated bonds	$16,659 00															
	.....	On railroad bonds	25,410 00															
	.....	On Pontchartrain railroad bonds	960 00															
	.....	On water-works bonds	492 50															
	.....	On ten per cent. bonds	2,475 00															
	.....	On seven per cent. bonds of 1869	8,408 40															
Coupons due and not yet presented for payment.	.....	On seven per cent. bonds of 1870	9,366 00															
	.....	On wharf-improvement bonds	328 50															
	.....	On street-improvement bonds	1,496 50															
	.....	On one million loan	652 50															
	.....	On Jefferson City bonds	1,460 00															
	.....	On Fink Asylum	626 49															
	.....	On McDonogh School	1,642 94															
	.....	On gold consolidated G. S	2,642 50															
	.....	On gold consolidated D. S.	10,288 00															
			82,938 33															
		Sundry open accounts	346 72															
		Five-eighths tax, excess over two per cent. collected on a portion of assessment 1870, to be refunded to tax-payers	17,674 65															
		Certificates of appropriation	796,621 22															
		Uncertified	2,676 24															
		Tax warrants outstanding	11,894 40															
		Bills payable	8,760 37															
			$22,815,456 17				$217,847 50	$14,525 92	$109,347 50	$107,450 00	$90,939 75	$149,101 17	$217,847 50	$14,525 92	$109,347 50	$107,450 00	$90,939 75	$149,101 17

Total amount of interest on coupons due in 1873..... $1,378,423.68.

II.

STATEMENT OF THE INDEBTEDNESS OF THE CITY OF NEW ORLEANS, DECEMBER 31, 1873.

Name.	Letter.	Issued for—	Amount.	Interest.	Capital due. Year.	Capital due. Month.	Interest due in each month. January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.
Consolidated loan	.....	Municipality No. 1	$2,500 00	7 per cent.	1876	May					$87 50						$87 50	
	M	Municipality No. 3	400 00	"	1879	September			$14 00						$14 00			
	M	" "	350 00	"	1879	November					12 25						12 25	
	J	Consolidated city of 1852	223,000 00	6 per cent.	1892	January	$6,690 00						$6,690 00					
	M	" " "	70,000 00	"	1892	March			$2,100 00						2,100 00			
	L	" " "	12,000 00	"	1892	April				$360 00						$360 00		
	G, H	" " "	209,000 00	"	1892	May					6,270 00						6,270 00	
	A	" " "	69,000 00	"	1892	June						$2,070 00						$2,070 00
	A, I, J	" " "	3,819,000 00	"	1892	July	114,570 00						114,570 00					
	L	" " "	42,000 00	"	1892	August		$1,260 00						$1,260 00				
	.....	Old corporation	148,666 74	5 per cent.	1873	June 20						3,716 67						3,716 67
Railroad loan	B	Jackson Railroad Company	198,000 00	6 per cent.	1875	January	5,940 00						5,940 00					
	"	" " "	100,000 00	"	1875	March			3,000 00						3,000 00			
	"	" " "	1,694,000 00	"	1874	May					50,820 00						50,820 00	
	C	" " "	150,000 00	"	1875	January	4,500 00						4,500 00					
	"	" " "	75,000 00	"	1875	April				2,250 00						2,250 00		
	"	" " "	1,125,000 00	"	1874	May					33,750 00						33,750 00	
	"	" " "	147,000 00	"	1874	September			4,410 00						4,410 00			
	D	Pontchartrain Railroad Company	113,000 00	"	1884	July	3,390 00						3,390 00					
Water works	W	Water works	1,393,400 00	5 per cent.	1899	January	34,835 00						34,835 00					
Seven per cent., 1869	Y	City notes	2,046,000 00	7 per cent.	1894	March			71,610 00						71,610 00			
	X	Registered bills	806,500 00	"	1894	"			28,227 50						28,227 50			
Seven per cent., 1870	N	City notes, warrants, etc	3,000,000 00	"	1875	June						105,000 00						105,000 00
Wharf improvement	O	Wharf-improvement bonds	724,000 00	7-30 per ct.	1880	December						26,426 00						26,426 00
Street improvement	Q	Paving and repairing streets	397,000 00	"	1911	August		14,490 50						14,490 50				
Ten per cent. loan	P	Bonds issued for deficit and old claims	1,143,550 00	10 per cent.	1881	April				57,177 50						57,177 50		
	.....	Pledged to Louisiana National Bank	*400,000 00															
		Floating-debt certificates	6,878 80															
		Seven-thirty certificates	3,068 93															
		Ten per cent. certificates	28 62															
Million loan	E	Four-year loan	54,750 00	Past due						2,737 50						2,737 50		
Gold consolidated bonds	.....	Drainage series	1,054,000 00	7 per cent.	1922	July	18,445 00			18,445 00			18,445 00			18,445 00		
		Warrants issued to the Mississippi and Mexican Gulf Ship Canal Company and others	35,377 67	"														
		General series	1,871,000 00	"	1922	July	32,742 50			32,742 50			32,742 50			32,742 50		
		Warrants issued for deficit of 1871 and conversion of other bonds	70,645 45															
		New seven-thirty certificates	7,984 62															
		Fink Asylum loan	48,000 00															
		McDonogh School loan	109,000 00															
		Street assessment	6,450 00	7-30 per ct.				235 42						235 42				
Jefferson City loan	.....	Jefferson City, No. 1 to 132	66,000 00	8 per cent.	1887	January	2,640 00						2,640 00					
	.....	" " 1 " 400	200,000 00	"	1897	June						8,000 00						8,000 00
	.....	" " 1 " 29	29,000 00	"	1900	January	1,160 00						1,160 00					
Coupons due and not yet presented for payment	.....	On consolidated bonds	$11,925 00															
	.....	On railroad bonds	24,660 00															
	.....	On Pontchartrain railroad bonds	60 00															
	.....	On water-works bonds	1,005 00															
	.....	On ten per cent. bonds	2,685 00															
	.....	On seven per cent. bonds of 1869	9,682 50															
	.....	On seven per cent. bonds of 1870	7,917 00															
	.....	On wharf-improvement bonds	693 50															
	.....	On street-improvement bonds	1,496 50															
	.....	On one-million loan	632 50															
	.....	On Jefferson City bonds	1,880 00															
	.....	On Fink Asylum	751 76															
	.....	On McDonogh School	2,284 49															
	.....	On gold consolidated G. S	4,515 00															
	.....	On gold consolidated D. S	4,878 00															
			75,066 15															
		Sundry open accounts	2,092 24															
		Five-eighths tax, excess over two per cent. collected on a portion of assessment 1870, to be refunded to tax-payers	16,190 35															
		Certificates of appropriation	435,935 61															
		Uncertified	3,000 00															
		Tax warrants outstanding	38,100 63															
		Bills payable	8,760 37															
		Loan of Louisiana National Bank— Total	$480,000 00															
		Less above	*400,000 00															
			80,000 00															
			$22,329,696 18				$224,912 50	$15,985 92	$109,361 50	$113,712 50	$90,939 75	$145,212 67	$224,912 50	$15,985 92	$109,361 50	$113,712 50	$90,939 75	$145,212 67

Total amount of interest due in 1874, $1,400,249.68.

(4)

STATEMENT OF INDEBTEDNESS OF THE CITY OF NEW ORLEANS, JUNE 30, 1874.

Name.	Letter.	Date.	For what issued.	Amount.	Interest.	Date of maturity.	Coupons due in each month.											
							January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.
Consolidated bonds	.....	May 1, 1851	Debt of municipality No. 1	$2,500 00	7 per cent	May 1, 1876					$87 50						$87 50	
	M	September 1, 1849	Debt of municipality No. 3	400 00	7 per cent	September 1, 1879			$14 00						$14 00			
	M	November 1, 1849	" " "	350 00	7 per cent	November 1, 1879					12 25						12 25	
	J	January 1, 1857	Consolidated city debt of 1852	223,000 00	6 per cent	January 1, 1892	$6,690 00						$6,690 00					
	M	March 1, 1869	" " "	70,000 00	6 per cent	March 1, 1892			2,100 00						2,100 00			
	L	April 1, 1868	" " "	12,000 00	6 per cent	April 1, 1892				$360 00						$360 00		
	G	May 1, 1856	" " "	203,000 00	6 per cent	May 1, 1892					6,090 00						6,090 00	
	H	May 1, 1856	" " "	6,000 00	6 per cent	May 1, 1892					180 00						180 00	
	A	June 1, 1854	" " "	69,000 00	6 per cent	June 1, 1892							$2,070 00					$2,070 00
	A	July 1, 1852	" " "	3,636,000 00	6 per cent	July 1, 1892	109,080 00						109,080 00					
	I	July 1, 1856	" " "	25,000 00	6 per cent	July 1, 1892	750 00						750 00					
	J	July 1, 1860	" " "	158,000 00	6 per cent	July 1, 1892	4,740 00						4,740 00					
	K	August 1, 1864	" " "	42,000 00	6 per cent	August 1, 1892		$1,260 00						$1,260 00				
Railroad bonds	B	January 1, 1855	Jackson Railroad Company	198,000 00	6 per cent	January 1, 1875	5,940 00						5,940 00					
	B	March 1, 1855	" " "	100,000 00	6 per cent	March 1, 1875			3,000 00						3,000 00			
	B	May 1, 1854	" " "	1,525,000 00	6 per cent	May 1, 1874					45,750 00						45,750 00	
	C	January 1, 1855	Opelousas " "	150,000 00	6 per cent	January 1, 1875	4,500 00						4,500 00					
	C	April 1, 1855	" " "	75,000 00	6 per cent	April 1, 1875				2,250 00						2,250 00		
	C	May 1, 1854	" " "	955,000 00	6 per cent	May 1, 1874					28,650 00						28,650 00	
	C	September 1, 1854	" " "	147,000 00	6 per cent	September 1, 1874			4,410 00						4,410 00			
	D	July 15, 1854	Pontchartrain Railroad Company	113,000 00	6 per cent	July 15, 1881	3,390 00						3,390 00					
Water-works bonds	W	January 1, 1869	Purchase of water works	1,392,400 00	5 per cent	January 1, 1899	34,810 00						34,810 00					
Seven per cent. bonds, 1869	X	March 1, 1869	Registered bills	806,500 00	7 per cent	March 1, 1894			28,227 50						28,227 50			
	Y	March 1, 1869	City notes	2,043,000 00	7 per cent	March 1, 1894			71,505 00						71,505 00			
Seven per cent bonds, 1870	N	June 1, 1870	City notes, warrants, etc	3,000,000 00	7 per cent	June 1, 1895						105,000 00						105,000 00
Wharf-improvement bonds	O	December 1, 1870	Repairing and building wharves	709,000 00	7-30 per ct	December 1, 1880						25,878 50						25,878 50
Street improvement bonds	Q	August 1, 1871	Paving and repairing streets	423,000 00	7-30 per ct	August 1, 1911		15,439 50						15,439 50				
Ten per cent. bonds, 1871	P	April 1, 1871	Deficit and old claims	1,143,600 00	10 per cent	April 1, 1881				57,180 00						57,180 00		
	.....		Pledged to Louisiana National Bank	400,000 00	No interest													
Jefferson City bonds	.....	January 1, 1857	Debt of Jefferson City, assumed	66,000 63	8 per cent	January 1, 1887	2,640 00						2,640 00					
	I	January 1, 1870	" " "	29,000 00	8 per cent	January 1, 1900	1,160 00						1,160 00					
	.....	June 1, 1867	" " "	200,000 00	8 per cent	June 1, 1897												
Million-loan bonds	E	October 1, 1868	Four-year loan	45,850 00	10 per cent	October 1, 1872						8,000 00						8,000 00
Consolidated gold bonds, general series	.....	July 1, 1872	Renewal of obligations, etc	2,265,000 00	7 per cent	July 1, 1922	39,637 50			39,637 50			39,637 50			39,637 50		
Consolidated gold bonds, drainage series	.....	July 1, 1872	Draining canals and protection levees	1,343,000 00	7 per cent	July 1, 1922	23,502 50			23,502 50			23,502 50			23,502 50		
McDonogh school bonds	.....	December 1, 1862	Investment for benefit of McDonogh fund	50,000 00	6 per cent	December 1, 1912						1,500 00						1,500 00
	.....	August 1, 1864	" " " "	8,000 00	6 per cent	August 1, 1914		240 00						240 00				
	.....	October 1, 1864	" " " "	20,000 00	6 per cent	October 1, 1914				600 00						600 00		
	.....	April 1, 1864	" " " "	31,000 00	6 per cent	April 1, 1914				930 00						930 00		
Fink asylum bonds	.....	January 1, 1864	Investment for benefit of Fink asylum fund	48,000 00	6 per cent	January 1, 1914	1,440 00						1,440 00					
Street-assessment bonds	S	February 1, 1873	Paving streets	6,450 00	7-30 per ct	February 1, 1883		235 43						235 43				
	S	February 1, 1874	"	2,350 00	7-30 per ct	February 1, 1884		85 77						85 77				
			Certificates for consolidated gold bonds, general series	58,809 40														
			Certificates for consolidated gold bonds, drainage series	9,096 82														
			Floating-debt certificates	5,909 99														
			Seven-thirty certificates, ordinance No. 197	3,068 93														
			" " " 882	6,713 33														
			Certificates for ten per cent. bonds	476 41														
			Five-eights tax excess certificates	14,435 78														
			Certificates of appropriation	286,950 19														
			Certificates of appropriation uncertified	2,500 00														
			Tax warrants	24,825 24														
			Bills payable	8,760 37														
Interest coupons due and not presented for payment			Consolidated bonds	$11,200 00														
			Railroad bonds	21,510 00														
			Pontchartrain bonds	360 00														
			Water-works bonds	2,125 00														
			Seven per cent. bonds of 1869	8,963 15														
			Jefferson City bonds	1,260 00														
			Wharf-improvement bonds	1,898 00														
			Ten per cent. bonds	1,367 50														
			Street-improvement bonds	1,423 50														
			Consolidated gold bonds, G. S	3,045 00														
			Consolidated gold bonds, D. S	1,798 00														
			Seven per cent. bonds of 1870	18,564 00														
			Million loan	632 50														
			McDonogh school	4,283 82														
			Fink asylum	1,649 73														
					80,080 20													
			Sundry open accounts		1,636 95													
					$22,245,663 61		$238,280 00	$17,260 70	$109,256 50	$124,460 00	$80,769 75	$142,448 50	$238,280 00	$17,260 70	$109,256 50	$124,460 00	$80,769 75	$142,448 50

Total amount of interest due in 1874, $1,424,950.90.

II.

STATEMENT OF THE INDEBTEDNESS OF THE CITY OF NEW ORLEANS, DECEMBER 31, 1874.

Name.	Letter.	Date of issue.	For what issued.	Amount.	Interest.	When due.	Coupons due in each month.											
							January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.
Consolidated bonds	....	May 1, 1851	Debt of municipality No. 1	$2,500 00	7 per cent.	May 1, 1876					$87 50						$87 50	
	M	September 1, 1849	" " " 3	400 00	7 per cent.	September 1, 1879			$14 00						$14 00			
	M	November 1, 1849	" " " 3	350 00	7 per cent.	November 1, 1879					12 25						12 25	
	J	January 1, 1857	Consolidated city debt of 1852	223,000 00	6 per cent.	January 1, 1892	$6,690 00						$6,620 00					
	M	March 1, 1869	" " " "	70,000 00	6 per cent.	March 1, 1892			2,100 00						2,100 00			
	L	April 1, 1868	" " " "	12,000 00	6 per cent.	April 1, 1892				$360 00						$360 00		
	G	May 1, 1856	" " " "	203,000 00	6 per cent.	May 1, 1892					6,090 00						6,090 00	
	H	May 1, 1866	" " " "	6,000 00	6 per cent.	May 1, 1892					180 00						180 00	
	A	June 1, 1854	" " " "	6,900 00	6 per cent.	June 1, 1892						$2,070 00						$2,070 00
	A	July 1, 1852	" " " "	3,636,000 00	6 per cent.	July 1, 1892	109,080 00						109,080 00					
	I	July 1, 1856	" " " "	25,000 00	6 per cent.	July 1, 1892	750 00						750 00					
	J	July 1, 1860	" " " "	158,000 00	6 per cent.	July 1, 1892	4,740 00						4,740 00					
	K	August 1, 1864	" " " "	42,000 00	6 per cent.	August 1, 1894		1,260 00						$1,260 00				
	B	January 1, 1855	Jackson Railroad Company	198,000 00	6 per cent.	January 1, 1875	5,940 00						5,940 00					
	B	March 1, 1855	" " "	100,000 00	6 per cent.	March 1, 1875			3,000 00						3,000 00			
	B	May 1, 1854	" " "	1,080,000 00	6 per cent.	May 1, 1874					$32,400 00						32,400 00	
	B	May 1, 1854	" " "	394,000 00	6 per cent.	May 1, 1894					11,820 09						11,820 00	
Railroad bonds	C	January 1, 1855	Opelousas " "	150,000 00	6 per cent.	January 1, 1875	4,500 00						4,500 00					
	C	April 1, 1855	" " "	75,000 00	6 per cent.	April 1, 1875				2,250 00						2,250 00		
	C	May 1, 1854	" " "	412,000 00	6 per cent.	May 1, 1874					12,360 00						12,360 00	
	C	May 1, 1854	" " "	379,000 00	6 per cent.	May 1, 1894					11,370 00						11,370 00	
	C	September 1, 1854	" " "	71,000 00	6 per cent.	September 1, 1874			2,130 00						2,130 00			
	C	September 1, 1854	" " "	58,000 00	6 per cent.	September 1, 1894			1,740 00						1,740 00			
	D	July 15, 1854	Pontchartrain Railroad Company	113,000 00	6 per cent.	July 15, 1881	3,390 00						3,390 00					
Water-works bonds	W	January 1, 1869	Purchase of water works	1,392,400 00	5 per cent.	January 1, 1899	34,810 00						34,810 00					
Seven per cent. bonds, 1869	X	March 1, 1869	Registered bills	806,560 00	7 per cent.	March 1, 1894			28,227 50						28,227 50			
	Y	March 1, 1869	City notes	2,043,000 00	7 per cent.	March 1, 1894			71,505 00						71,505 00			
Seven per cent bonds, 1870	N	June 1, 1870	City notes, warrants, etc	3,000,000 00	7 per cent.	June 1, 1895						105,000 00						105,000 00
Wharf-improvement bonds	O	December 1, 1870	Repairing and building wharves	702,000 00	7-30 per cent.	December 1, 1880						25,623 60						25,623 00
Street improvement bonds	Q	August 1, 1871	Paving and repairing streets	446,000 00	7-30 per cent.	August 1, 1911			16,279 00					16,279 00				
Ten per cent. bonds, 1871	P	April 1, 1871	Deficit and old claims	1,143,600 00	10 per cent.	April 1, 1881				57,180 00						57,180 00		
	P	April 1, 1871	Pledged to Louisiana National Bank	400,000 00	No interest													
Jefferson City bonds	....	January 1, 1857	Debt of Jefferson City, assumed	66,000 00	8 per cent.	January 1, 1887	2,640 00						2,640 00					
	I	January 1, 1870	" " "	29,000 00	8 per cent.	January 1, 1900	1,160 00						1,160 00					
	....	June 1, 1867	" " "	200,000 00	8 per cent.	June 1, 1897						8,000 00						8,000 00
Million-loan bonds	E	October 1, 1868	Four-year loan	37,650 00	10 per cent.	October 1, 1872												
Consolidated gold bonds, general series	....	July 1, 1872	Renewal of obligations, etc	2,508,000 00	7 per cent.	July 1, 1922	43,890 00			43,890 00			43,890 00			43,890 00		
Consolidated gold bonds, drainage series	....	July 1, 1872	Drainage canals and protection levees	1,634,000 00	7 per cent.	July 1, 1922	28,595 00			28,595 00			28,595 00			28,595 00		
McDonogh school bonds	....	December 1, 1862	Investment for benefit of McDonogh fund	50,000 00	6 per cent.	December 1, 1912						1,500 00						1,500 00
	....	August 1, 1864	" " " "	8,000 00	6 per cent.	August 1, 1914		240 00						240 00				
	....	October 1, 1864	" " " "	20,000 03	6 per cent.	October 1, 1914				600 00						600 00		
	....	April 1, 1864	" " " "	31,000 00	6 per cent.	April 1, 1914				930 00						930 00		
Fink asylum bonds	....	January 1, 1864	Investment for benefit of Fink fund	48,000 00	6 per cent.	January 1, 1914	1,440 00						1,440 00					
Street-assessment bonds	S	February 1, 1873	Paving streets	6,450 00	7-30 per cent.	February 1, 1883		235 43						235 43				
	S	February 1, 1874	"	2,350 00	7-30 per cent.	February 1, 1884		85 77						85 77				
	S	November 24, 1874	"	650 00	7-30 per cent.	November 24, 1884					32 74						23 74	
Carrollton funding bonds	A	November 1, 1871	Debt of Carrollton City, assumed	140,400 00	8 per cent.	November 1, 1901					5,616 00						5,616 00	
Carrollton improvement bonds	B	November 1, 1872	" " "	53,900 00	8 per cent.	November 1, 1892					2,156 00						2,156 00	
			Certificates for gold bonds, general series	62,093 01														
			Certificates for gold bonds, drainage series	38,120 62														
			Floating-debt certificates	5,847 09														
			Seven-thirty administration certificates, ordinance No. 197	3,014 93														
			Seven-thirty administration certificates, ordinance No. 882	4,545 47														
			Certificates for ten per cent. bonds	476 41														
			Bills payable	8,760 37														
			Certificates for street-improvement bonds	1,930 58														
			Coupons due and unpaid	257,386 74														
			Five eighths tax excess	14,239 39														
			Certificates of appropriation	151,912 70														
			" " uncertified	2,000 00														
			Tax warrants	15,792 58														
			Total	$22,812,179 89			$247,625 00	$18,100 20	$108,716 50	$133,805 00	$82,115 47	$142,193 00	$247,625 00	$18,100 20	$108,716 50	$133,805 00	$82,215 47	$142,193 00

Bonded debt, $22,246,150.00; certified debt, $566,029.89; total, $22,812,179.89. Yearly interest, $1,465,110.35.

V.

STATEMENT OF THE INDEBTEDNESS OF THE CITY OF NEW ORLEANS, DECEMBER 31, 1875.

Name.	Letter.	Date of issue.	For what issued.	Amount.	Interest.	Maturity.	Coupons due in months of— January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.
Consolidated bonds	.....	May 1, 1851	Debt of municipality No. 1	$2,500 00	7 per cent	May 1, 1876					$87 50						$87 50	
	M	September 1, 1849	" " " 2	400 00	"	September 1, 1879			$14 00						$14 00			
	M	November 1, 1849	" " " 3	350 00	"	November 1, 1879					12 25						12 25	
	J	January 1, 1857	Consolidated city debt of 1852	223,000 00	6 per cent	January 1, 1892	$6,690 00						$6,690 00					
	M	March 1, 1869	" " "	70,000 00	"	March 1, 1892			2,100 00						2,100 00			
	L	April 1, 1868	" " "	12,000 00	"	April 1, 1892				$360 00						$360 00		
	G	May 1, 1856	" " "	203,000 00	"	May 1, 1892					6,090 00						6,090 00	
	H	May 1, 1856	" " "	6,000 00	"	May 1, 1892					180 00						180 00	
	A	June 1, 1854	" " "	69,000 00	"	June 1, 1892						$2,070 00						$2,070 00
	A	July 1, 1852	" " "	3,636,000 00	"	July 1, 1892	109,080 00						109,080 00					
	I	July 1, 1856	" " "	25,000 00	"	July 1, 1892	750 00						750 00					
	J	July 1, 1860	" " "	158,000 00	"	July 1, 1892	4,740 00						4,740 00					
	K	August 1, 1864	" " "	42,000 00	"	August 1, 1892		$1,260 00						$1,260 00				
	B	January 1, 1855	Jackson Railroad Company	191,000 00	"	January 1, 1875	5,730 00						5,730 00					
	B	March 1, 1855	" " "	86,000 00	"	March 1, 1875			2,580 00						2,580 00			
	B	May 1, 1854	" " "	1,054,000 00	"	May 1, 1874					31,620 00						31,620 00	
	B	May 1, 1854	" " "	402,000 00	"	May 1, 1894					12,060 00						12,060 00	
Railroad bonds	C	January 1, 1855	Opelousas " "	150,000 00	"	January 1, 1875	4,500 00						4,500 00					
	C	April 1, 1855	" " "	70,000 00	"	April 1, 1875				2,100 00						2,100 00		
	C	May 1, 1854	" " "	388,000 00	"	May 1, 1874					11,640 00						11,640 00	
	C	May 1, 1854	" " "	385,000 00	"	May 1, 1894					11,550 00						11,550 00	
	C	September 1, 1854	" " "	67,000 00	"	September 1, 1874			2,010 00						2,010 00			
	C	September 1, 1854	" " "	62,000 00	"	September 1, 1894			1,860 00						1,860 00			
	D	July 15, 1854	Pontchartrain Railroad Company	113,000 00	"	July 15, 1884	3,390 00						3,390 00					
Water-works bonds	W	January 1, 1869	Purchase of water works	1,392,400 00	5 per cent	January 1, 1899	34,810 00						34,810 00					
Seven per cent. bonds, 1869	X	March 1, 1869	Registered bills	806,500 00	7 per cent	March 1, 1894			28,227 50						28,227 50			
	Y	March 1, 1869	City notes	2,043,000 00	"	March 1, 1894			71,505 00						71,505 00			
Seven per cent bonds, 1870	N	June 1, 1870	City notes, warrants, etc	3,000,000 00	"	June 1, 1895						105,000 00						105,000 00
Street-improvement bonds	Q	August 1, 1871	Paving and repairing streets	446,000 00	7-30 per cent	August 1, 1911		16,279 00						16,279 00				
Ten per cent. bonds	P	April 1, 1871	Deficit and old claims	1,143,600 00	10 per cent	April 1, 1881				57,180 00						57,180 00		
Jefferson City bonds	.....	January 1, 1857	Debt of Jefferson City, assumed	66,000 00	8 per cent	January 1, 1887	2,640 00						2,640 00					
	I	January 1, 1870	" " "	29,000 00	"	January 1, 1900	1,160 00						1,160 00					
	.....	June 1, 1867	" " "	200,000 00	"	June 1, 1897						8,000 00						8,000 00
One million loan bonds	E	October 1, 1868	Four-year loan	24,150 00	10 per cent	October 1, 1872												
Consolidated gold bonds, general series	.....	July 1, 1872	Renewal of obligations, etc	2,518,000 00	7 per cent	July 1, 1922	44,065 00			44,065 00			44,065 00			44,065 00		
Consolidated gold bonds, drainage series	.....	July 1, 1872	Drainage canals and protection levees	1,665,000 00	"	July 1, 1922	29,137 50			29,137 50			29,137 50			29,137 50		
McDonogh school bonds	.....	December 1, 1862	Investment for benefit of McDonogh fund	50,000 00	6 per cent	December 1, 1912						1,500 00						1,500 00
	.....	August 1, 1864	" " " "	8,000 00	"	August 1, 1914		240 00						240 00				
	.....	October 1, 1864	" " " "	20,000 00	"	October 1, 1914				600 00						600 00		
	.....	April 1, 1864	" " " "	31,000 00	"	April 1, 1914				930 00						930 00		
Fink asylum bonds	.....	January 1, 1864	Investment for benefit of Fink fund	48,000 00	"	January 1, 1914	1,440 00						1,440 00					
Street-assessment bonds	S	February 1, 1873	Paving streets	6,450 00	7-30 per cent	February 1, 1883		235 43						235 43				
	S	February 1, 1874	"	2,350 00	"	February 1, 1884		85 77						85 77				
	S	November 24, 1874	"	650 00	"	November 24, 1884					23 72						23 72	
Carrollton funding bonds	A	November 1, 1871	Debt of Carrollton City, assumed	140,400 00	8 per cent	November 1, 1901					5,616 00						5,616 00	
Carrollton improvement bonds	B	November 1, 1872	" " "	53,850 00	"	November 1, 1892					2,154 00						2,154 00	
			Certificates for gold bonds, general series	52,003 01														
			" " " drainage series	7,120 62														
			Floating-debt certificates	5,817 09														
			Seven-thirty administration certificates, ordinance No. 197	3,014 93														
			Seven-thirty administration certificates, ordinance No. 882	4,545 47														
			Certificates for ten per cent. bonds	476 41														
			Bills payable	4,260 37														
			Certificates for street-improvement bonds	1,930 58														
			Five-eights tax excess	13,485 00														
			Certificates of appropriation	130,733 89														
			Tax warrants	9,525 32														
			Balance coupons unpaid	574,878 50														
			Pledged to Louisiana National Bank $400,000 00															
			Balance collateral security fund 276,394 12															
				123,605 88														
			Certificates for wharf-improvement bonds	381 53														
			Total	$22,041,378 60			$248,132 50	$18,100 20	$108,296 50	$134,372 50	$81,033 47	$116,570 00	$248,132 50	$18,100 20	$108,296 50	$134,372 50	$81,033 47	$116,570 00

Total bonded debt	$21,109,600 00
Total certified debt	931,778 60
	22,041,378 60
Yearly interest	1,413,010 35

Note.—No cognizance is taken of the bonds funded in premium bonds and the issue of the latter, for the reason that the plan was not perfected at the above date and the bonds were not canceled. The next debt statement, June 30, 1876, will embrace the entire issue of premium bonds to that date.

726

No. 12.34.
Plats etc.
of
New Orleans
} p. 726.

Rendon
Street
Street
Loper
Street
Street
Salcedo
Street
Gayoso
Dupré
Dumaine
St. Philip
Bellechasse
White
Ursulines
Rendon (2d)
Street
St. John
Route
Street
Lopez (3d)
Street
Gayoso (4th)
Street
Washington
Lepage
Dupré (5th)
St. John
Street
White (6th)
Street
Esplanade
Oaks
Street
Seventh
Broad
Street

1050 STATEMENT OF DRAINAGE ASSESSMENT, INTEREST, AND SHERIFF'S COSTS COLLECTED IN THE 1ST, 2, 3, & 4TH DRAINING DISTRICTS FROM JULY, 1876, TO DECEMBER 31ST, 1887, IN WARRANTS AND CURRENCY AND PAID IN THE CITY TREASURY.

	DRAINAGE COLLECTIONS IN THE FOUR DISTRICTS.				COLLECTIONS IN THE 1, 2, 3, & 4TH DRAINING DISTRICTS, SEPARATELY, & SHERIFF'S COSTS.						RETURNS MADE TO THE CITY BY RECEIVING WARRANTS, & HOW PAID.				
	Assessment.	Interest.	Sheriff's cost.	Total.	1st.	2nd.	3d.	4th.	Sheriff's costs.	Total.	In warrants.	Interest on them.	Total in d'g warrants.	In currency.	Total W. & cash.
1876.															
Aug. 1	11,648 20	718 65		12,366 85	604 65	98 15	1,453 95	10,210 10		12,366 85	11,049 00	508 70	11,557 70	809 15	12,366 85
Sept. 4	3,898 70	1,373 95	89 20	5,361 85	1,753 30	689 75	1,809 55	1,020 05	89 20	5,361 85	3,004 30	306 35	3,310 65	2,051 20	5,361 85
Oct. 2	2,281 60	720 95	99 45	3,102 00	630 95	636 20	773 20	962 20	99 45	3,102 00	2,232 37	287 18	2,519 55	582 45	3,102 00
" 31	1,508 55	533 50		2,042 05	194 60	1,307 80	406 30	133 35		2,042 05	1,428 15	67 75	1,495 90	546 15	2,042 05
Nov. 29	1,797 60	755 45	58 25	2,611 30	451 25	1,561 60	485 95	54 25	58 25	2,611 30	1,358 20	207 65	1,565 85	1,045 45	2,611 30
Dec. 30	1,125 70	497 90	3 55	1,627 15	256 15	1,039 85	132 05	195 55	3 55	1,627 15	936 80	149 70	1,086 50	540 65	1,627 15
1877.															
Jan'y 31	1,087 25	408 45		1,495 70	62 95	1,119 95	312 80			1,495 70	821 25	137 05	958 30	537 40	1,495 70
M'ch 1	1,889 35	644 10	4 10	2,537 55	12 75	1,885 15	543 20	92 35	4 10	2,537 55	1,682 50	291 65	1,974 15	563 40	2,537 55
" 31	1,281 95	429 80		1,711 75	212 25	670 20	766 20	63 10		1,711 75	990 65	178 30	1,168 95	542 80	1,711 75
May 2	1,017 75	148 65		1,166 40	628 70	94 05	443 65			1,166 40	536 90	100 35	637 25	529 15	1,166 40
" 31	1,439 10	468 80	7 10	1,915 00	355 00	397 65	1,136 25	19 00	7 10	1,915 00	1,147 80	219 35	1,367 15	547 85	1,915 00
June 30	2,922 15	801 40	3 60	3,727 15	424 85	2,762 75	501 30	34 65	3 60	3,727 15	2,627 65	506 35	3,134 00	593 15	3,727 15
Aug. 6	1,198 85	453 25		1,652 10	513 05	474 30	646 95	17 80		1,652 10	922 10	188 70	1,110 80	541 30	1,652 10
" 6	507 00	37 55	242 30	786 85	121 25		191 10	232 20	242 30	786 85	147 35	30 14	177 49	609 36	786 85
31	1,824 00	721 50	28 00	2,573 50	659 50	1,269 75	601 50	14 75	28 00	2,573 50	1,695 65	313 50	2,009 15	564 35	2,573 50
Sept. —	978 75	292 60	1 20	1,272 55	492 95	218 90	477 80	81 70	1 20	1,272 55	611 75	129 00	740 75	531 80	1,272 55
Octo. 31	1,129 95	394 20	4 10	1,528 25	715 05	313 55	430 35	65 20	4 10	1,528 25	882 60	107 45	990 05	538 20	1,528 25
Nov. 30	1,866 45	477 85	74 10	2,418 40	1,259 05	360 60	662 25	62 40	74 10	2,418 40	1,508 70	348 75	1,857 45	560 95	2,418 40
Dec. 31	1,275 70	253 30	8 45	1,537 45	683 00	119 10	726 90		8 45	1,537 45	842 85	156 65	999 50	537 95	1,537 45
1878.															
Jan'y 31	1,919 65	246 90		2,166 55	1,373 35	166 90	445 00	181 30		2,166 55	1,323 40	289 05	1,612 45	554 10	2,166 55
Feb'y 28	1,321 30	161 35	12 80	1,495 45	837 70	82 20	562 75		12 80	1,495 45	785 25	172 80	958 05	537 40	1,495 45
Apr. 1	524 00	162 95		686 95	127 40	127 40	424 80	7 35		686 95	137 75	32 05	169 80	517 15	686 95
" 30	385 45	141 10	51 75	578 30	164 35	159 40	117 70	85 10	51 75	578 30				578 30	578 30
May 31	873 80	271 55	3 50	1,148 85	337 00	282 60	282 30	244 05	3 50	1,148 85	549 35	134 65	684 00	464 85	1,148 85
June 29	830 05	149 65	7 10	986 80	699 40	90 50	189 80		7 10	986 80	369 30	92 85	462 15	524 65	986 80
Nov. 16	593 55	229 85	13 70	837 10	128 50	322 90	220 85	151 15	13 70	837 10				837 10	837 10
" "	251 00	121 80	8 75	381 55	72 05	247 90	52 85		8 75	381 55				381 55	381 55
" "	245 95	63 45		309 40	9 00	11 75	151 95	136 70		309 40				309 40	309 40
" "	105 60	38 65	6 65	150 90	32 10	12 60	91 85	7 70	6 65	150 90				150 90	150 90
Dec. 2	379 50	152 55	4 00	536 05		325 35	155 30	51 40	4 00	536 05	171 42	49 88	221 30	314 75	536 05
" 31	292 20	106 05	20 65	418 90	39 05	217 45	141 75		20 65	418 90				418 90	418 90
1879.															
Feb'y 1	784 10	182 60	25 30	992 00	274 80	390 50	72 60	228 80	25 30	992 00	199 90	59 90	259 80	732 20	992 00
28	8,470 35	2,122 65		10,593 00	168 10	238 70	9,673 30	512 90		10,593 00	7,114 90	2,332 45	9,447 35	1,145 65	10,593 00
M'ch 31	1,581 80	438 60	15 60	2,036 00	89 75	558 70	1,088 80	283 15	15 60	2,036 00	798 40	269 45	1,067 85	968 15	2,036 00
May 1	440 80	183 80	5 00	629 60	283 25	31 00	277 95	32 40	5 00	629 60	154 25	36 40	190 65	438 95	629 60
31	2,671 40	172 80	7 50	2,851 70	154 15	202 90	2,452 25	34 90	7 50	2,851 70	1,659 30	547 20	2,206 50	645 20	2,851 70
July 1	2,666 55	249 30	15 05	2,930 90	2,488 05	94 75	274 25	58 80	15 05	2,930 90	1,813 71	579 14	2,392 85	538 05	2,930 90
Aug. 9	685 85	249 45	26 75	962 05	310 25	209 80	61 95	353 30	26 75	962 05	52 40	16 20	68 60	893 45	962 05
Sept. 1	772 05	253 95	22 35	1,048 35	54 55	388 90	216 75	365 80	22 35	1,048 35	450 00	161 20	611 20	437 15	1,048 35
30	800 15	173 45	4 60	983 20		8 75	749 30	220 55	4 60	983 20	340 00	120 58	460 58	522 62	983 20
Over	67,273 70	16,009 30	874 45	84,157 45	17,674 05	19,199 65	30,195 30	16,214 00	874 45	84,157 45	50,345 90	9,128 37	59,474 27	24,683 18	84,157 45

Date.	Drainage collections in the four draining districts.				Collections in the 1, 2, 3, & 4th draining dist's, separately, with sheriff's costs.						Returns made to the city by receiving warrants, and how paid.				
	Assessment.	Interest.	Sheriff's costs.	Total.	1st.	2nd.	3d.	4th.	Sheriff's costs.	Total.	Face warrants.	Interest.	Total.	In currency.	Total.
Am't forward	67,273 70	16,009 30	874 45	84,157 45	17,674 05	19,199 65	30,195 30	16,241 00	874 45	84,157 45	50,345 90	9,128 37	59,474 27	24,683 18	84,157 45
1879.															
Oct. 31	1,651 15	155 40	16 60	1,823 15	320 05	137 60	921 50	427 40	16 60	1,823 15	894 87	332 40	1,227 27	595 88	1,823 15
Nov. 29	214 90	72 70		287 60	39 45		128 10	120 05		287 60				287 60	287 60
Dec. 31	101 20	43 50	8 55	153 25		15 60	63 60	65 50	8 55	153 25					153 25
1880.															
Jan'y 31	144 45	66 00	22 80	233 15	14 05	68 85	119 65	7 80	22 80	233 15					233 15
Feb'y —	558 50	124 20	10 70	693 40	244 55	98 90	307 00	32 25	10 70	693 40					693 40
M'ch 31	547 30	174 25	17 20	738 75	37 40	68 60	514 65	100 90	17 20	738 75					738 75
Apr. 20	345 15	144 05	28 35	517 55	41 40	28 30	180 15	239 35	28 35	517 55					517 55
May 31	238 45	110 05	16 10	364 60	81 45	43 35	85 10	138 60	16 10	364 60	66 85	27 50	94 35	270 25	364 60
June 30	481 75	83 30	19 35	584 40	191 10	43 45	97 80	232 70	19 35	584 40				584 40	584 40
July 31	388 50	120 65	22 70	509 15	74 10	139 70	173 35	122 00		509 15				509 15	509 15
Aug. 31	228 55	86 20		337 45	120 55	13 60	174 55	6 05	22 70	337 45				337 45	337 45
Sept. 30	114 95	51 20	4 50	170 65	66 95	20 40	78 80		4 50	170 65				170 65	170 65
Oct. 30	137 25	58 70		195 95	93 50	1 50	93 00	7 95		195 95				195 95	195 95
Nov. 30	293 95	79 05	13 50	386 50	114 50	71 80	62 35	124 35	13 50	386 50				386 50	386 50
Dec. 31	519 15	137 60		656 75	196 90	328 15	95 40	36 30		656 75	275 00	113 10	388 10	268 65	656 75
1881.															
Feb'y 1	545 60	31 25		576 85	105 30	3 85	36 60	431 10		576 85	292 90	138 20	431 10	145 75	576 85
" 28	261 70	89 95	4 50	356 15	275 35	13 95	53 65	8 70	4 50	356 15				356 15	356 15
Apr. 23	266 52	34 53		301 05	301 05					301 05				301 05	301 05
" 30	225 85	51 55	4 50	281 90	121 05	25 05	58 35	72 95	4 50	281 90				281 90	281 90
May 31	105 00	52 65	5 00	162 65	28 70	88 35	40 60		5 00	162 65				162 65	162 65
July 18	148 90	53 55	8 00	210 45	86 75	67 85	47 85		8 00	210 45				210 45	210 45
Aug. 12	371 05	119 35		490 40	17 35	48 25	424 80			490 40				490 40	490 40
Sept. 30	168 75	61 55	19 50	249 80		80 30	127 75	22 25	19 50	249 80				249 80	249 80
Oct. 31	107 00	53 40	9 00	160 40	98 85	17 35	33 30	10 90	9 00	169 40				169 40	169 40
Dec. 1	73 80	35 90	3 50	113 20	20 05		69 45	20 20	3 50	113 20				113 20	113 20
1882.															
Jan'y 3	87 00	40 50	4 50	132 00	7 95	45 45	57 00	17 10	4 50	132 00				132 00	132 00
" 31	140 75	66 45	9 00	216 20	39 10	127 15	19 95	21 00	9 00	216 20	79 05	10 80	89 85	126 35	216 20
M'ch 11	87 40	42 15	16 45	146 00	30 90	24 35	74 30		16 45	146 00				146 00	146 00
May 2	170 50	82 45	8 00	260 95	141 10	43 50	19 65	48 70	8 00	260 95				260 95	260 95
" 8	597 15			597 15				597 15						597 15	597 15
June 7	288 74	108 81	4 00	401 55	364 10	8 40	25 05		4 00	401 55				401 55	401 55
July 8	90 30	47 75		138 05	29 15	55 35	22 50	31 05		138 05				138 05	138 05
Aug. 4	197 95	49 10	4 50	251 55	15 00	196 90	35 15		4 50	251 55				251 55	251 55
Sept. 27	414 75	28 15		442 90	4 20	389 60	49 10			442 90				442 90	442 90
Nov. 11	1,444 30	708 15	8 10	2,160 55	39 25	1,608 95	468 10	36 15	8 10	2,160 55	1,300 00	774 50	2,074 50	86 05	2,160 55
" 17	109 40	54 90	12 00	176 30	122 10	26 40	15 80		12 00	176 30				176 30	176 30
Dec. 29	50 15	25 15	10 00	85 30	12 75	39 45	23 10		10 00	85 30				85 30	85 30
1883.															
Jan'y 19	94 40	52 10		146 50			146 50			146 50				146 50	146 50
Feb'y 15	59 45	29 90	4 50	93 85	30 65	24 00	34 70		4 50	93 85				93 85	93 85
M'ch 31	70 00	11 65	4 50	86 15	38 85	33 80	9 00		4 50	86 15				86 15	86 15
Apr. 30	54 75	18 35		73 10		43 05	30 05			73 10				73 10	73 10
June 19	209 80	46 35		256 15	213 90	14 60	18 95	8 70		256 15				256 15	256 15
	79,679 76	19,511 74	1,194 35	100,385 85	21,453 45	23,305 35	35,204 55	19,228 15	1,194 35	100,385 85	53,254 57	10,524 87	63,779 44	36,606 41	100,385 85

Date.	Assessment.	Interest.	Sheriff's costs.	Total.	1st.	2nd.	3d.	4th.	Sheriff's costs.	Total.	Face warrants.	Interest.	Total.	In currency.	Total.
Am't forward	79,679 76	19,511 74	1,194 35	100,385 85	21,453 45	23,305 35	35,204 55	19,228 15	1,194 35	100,385 85	53,254 57	10,254 87	63,779 44	36,606 41	100,385 85
1883.															
July 20	108 30	36 70		145 00		38 05	71 95	35 00		145 00				145 00	145 00
Sept. 1	35 70	18 55	4 60	58 85	26 30	5 40	22 55		4 60	58 85				58 85	58 85
Nov. 30	142 25	31 20	3 50	176 95	37 95	59 65	49 25	26 60	3 50	176 95				176 95	176 95
Dec. 31	42 10	15 95		61 75	19 60	5 45		33 00	3 70	61 75				61 75	61 75
1884.															
Feb'y 15	47 20	6 65		53 85	31 50	19 80	2 55			53 85				53 85	53 85
M'ch 12	63 75	19 80		83 55		47 55	23 65	12 35		83 55				83 55	83 55
Apr. 14	94 45	30 55	4 55	129 55		53 65	71 35		4 55	129 55				129 55	129 55
May 10	126 70	7 50		134 20		13 20	110 00	11 00		134 20				134 20	134 20
June 2	214 75	25 40		240 15	42 75	72 00	25 40	100 00		240 15				240 15	240 15
July 30	397 30	125 95	4 50	527 75	28 05	413 00	82 20		4 50	527 75				527 75	527 75
Sept. 2	97 50	18 65		116 15	55 80	15 20	45 15			116 15				116 15	116 15
Octo. 9	96 95	12 30		109 25	50 65	8 55	30 05	20 00		109 25				109 25	109 25
Nov. 18	72 35	36 10		108 45	8 10	71 65	9 90	18 80		108 45				108 45	108 45
Dec. 18	62 35	18 65		81 00		49 85	31 15			81 00				81 00	81 00
1885.															
Feb'y 20	74 50	28 65		103 15		4 55	98 60			103 15				103 15	103 15
Apr. 6	74 95	30 15	4 50	109 60	27 80	31 60	36 70	9 00	4 50	109 60				109 60	109 60
May 12	98 15	13 85	4 10	116 10	61 65	4 50	36 95	8 90	4 10	116 10				116 10	116 10
June 1	67 30	24 70	4 10	96 10	12 05		45 60	34 35	4 10	96 10				96 10	96 10
July 1	146 75	20 05		166 80	80 35	57 20	24 30	4 95		166 80				166 80	166 80
Aug. 10	66 20	15 20	4 50	85 90	17 30	13 15	44 30	6 65	4 50	85 90				85 90	85 90
Sept. 2	157 25	12 80		170 05	80 20	77 55	12 30			170 05				170 05	170 05
Oct. 6	80 75	7 45		88 20	30 95	3 15	44 90	9 20		88 20				88 20	88 20
Nov. 5	40 65	7 15		47 80	6 25	8 70	32 85			47 80				47 80	47 80
1886.															
Jan'y 2	38 25	8 30		46 55	4 60	13 75	28 20			46 55				46 55	46 55
Feb'y 2	282 90	74 75		357 65	195 85	1 15	160 65			357 65	219 75	89 40	309 15	48 50	357 65
" 27	195 15	12 20		207 35	131 75	6 75	58 60	10 25		207 35				207 35	207 35
Apr. 10	39 25	17 95		57 20	3 50	38 20	3 80	11 70		57 20				57 20	57 20
" 30	95 45	14 55		110 00		49 85	51 90	8 25		110 00				110 00	110 00
May 31	109 60	35 05	5 00	149 65	46 80	24 20	73 65		5 00	149 65				149 65	149 65
June 30	96 20	14 60	4 50	115 30		8 50	102 30		4 50	115 30				115 30	115 30
July 31	70 25	7 35		77 60	15 00		48 75	13 85		77 60				77 60	77 60
Oct. 2	59 65	14 80		74 45	27 50	6 65	40 30			74 45				74 45	74 45
Dec. 1	76 30	12 00		88 30	30 00		11 55	46 75		88 30				88 30	88 30
" 31	36 85	8 65		45 50	3 00	13 50	19 50	9 50		45 50				45 50	45 50
1887.															
Jan'y 31	71 25	8 35		79 60	10 00	12 35	37 25	20 00		79 60				79 60	79 60
Feb'y 28	51 05	9 75		60 80	25 55	20 00	15 25			60 80				60 80	60 80
M'ch 31	40 25	16 10		56 35	22 90	9 35	18 10	6 00		56 35				56 35	56 35
Apr. 30	28 60	7 75		36 35	20 00	11 85	4 50			36 35				36 35	36 35
May 25	37 55	18 60		56 15	22 85	33 30				56 15				56 15	56 15
June 30	65 95	28 40		94 35	94 35					94 35				94 35	94 35
Aug. 1	47 20	12 20		59 40	19 55	18 55	21 30			59 40				59 40	59 40
Sept. 30	70 45	20 75	2 60	93 80	11 35	32 50	30 60	16 75	2 60	93 80				93 80	93 80
	83,600 06	20,417 79	1,244 50	105,262 35	22,755 25	24,679 20	36,882 40	19,701 00	1,244 50	105,262 35	53,474 32	10,614 27	64,088 59	41,173 76	105,262 35

	First draining district.					Second draining district.					Third draining district.					Fourth draining district.					
	Assessment.	Interest.	10% ct.	Cost *fi. fas.*	Total.	Assessment.	Interest.	10 p'r ct.	Cost *fi. fas.*	Total.	Assessment.	Interest.	10 per cent.	Cost *fi. fas.*	Total.	Assessment.	Interest.	10 per cent.	Cost *fi. fas.*	Total.	Te-total.
1871.																					
June	297 25	40 80	16 90		354 95	245 85	86 70	32 15		364 70											719 65
July	608 30	2 39	59 11		669 80	191 70	74 00	26 50		292 20											962 00
Aug.	649 20	4 30	11 15		664 65	771 45	70 15	84 15		925 75											1,590 40
Sept.	168 35	35 20	15 20		218 75	231 75	92 95	33 45		358 15											576 90
Octo.	348 13	36 87	17 70		402 70	1,322 00	113 05	43 15		1,478 20											1,880 90
Nov.	235 50	36 40	21 85		293 75	117 10	34 65	12 75		164 50											458 25
Dec'r	506 10	79 10	51 95		637 15	217 80	73 35	28 60		319 75											956 90
1872.																					
Jan'y	491 30	107 00	55 85		654 15	281 40	114 95	41 85		438 20											1,092 35
Feb'y	405 35	61 80	35 45		502 60	119 50	26 45	9 35		155 30											657 90
Mar.	388 80	72 65	42 25		503 70	101 05	36 45	13 80		151 30											655 00
April	899 10	138 60	86 75		1,124 45	123 60	47 30	17 05		187 95											1,312 40
May	769 40	87 40	74 35		931 15	880 60	272 30	117 40		1,270 30	94 15				94 15						2,295 60
June	1,299 45	130 05	79 30		1,508 80	83 60	18 75	7 70		110 05	236 15				736 15						1,855 00
July	1,107 60	181 45	115 60		1,404 65	328 60	27 95	11 45		368 00	426 70				426 70						2,199 35
Aug.	1,005 60	149 55	88 45		1,243 60	651 55	227 10	88 80		967 45	431 35				431 35						2,642 40
Sept.	688 40	148 50	82 15		919 05	261 80	87 20	34 85		383 85	546 70				546 70						1,849 60
Oct.	295 25	46 60	26 75		368 60	64 20	20 45	8 35		93 00	517 15				517 15						978 75
Nov.	479 55	12 65	6 30		498 50	64 80	22 85	8 30		95 95	68 55				68 55						663 00
Dec.	217 95	19 70	9 25		246 90	6 50	2 25	85		9 60	376 00				376 00						632 50
1873.																					
Jan'y	63 30	14 90	6 95		85 15	42 80	15 80	6 10		64 70	174 50				174 50	10 40				10 40	334 75
Feb'y	167 95	36 10	20 40		224 45	22 20	7 30	2 95		32 45	558 05				558 05	21 70				21 70	836 65
M'ch	204 00	46 70	25 25		275 45	37 05	12 20	4 85		54 10	1,981 75	24 90	123 35		2,130 00	114 00	1 65	8 35		124 00	2,584 05
April	277 85	38 75	27 05		243 65	914 90	313 65	122 30		1,350 85	2,316 05	44 65	202 40		2,563 10	168 80	3 90	16 10		188 80	4,446 40
May	611 65	88 75	41 45		741 85	203 95	59 85	27 45		291 25	2,910 90	57 60	290 45		3,258 95	227 60	5 20	22 90		255 70	4,547 75
June	411 15	95 55	52 75		559 45	147 45	43 55	19 20		210 20	2,051 55	55 70	204 15		2,311 40	376 75	8 85	37 60		423 20	3,504 25
July	309 10	78 20	38 70		426 00	203 65	67 00	27 00		297 65	2,146 65	62 55	214 20		2,423 40	289 10	8 20	28 90		326 20	3,473 25
Aug.	255 55	59 25	28 40		343 20	312 05	90 30	40 45		442 80	1,290 20	44 30	128 55		1,463 05	251 40	6 90	25 15		283 45	2,532 50
Sept.	184 85	55 80	22 60		263 25	97 75	19 65	8 80		126 20	611 80	39 35	60 30		711 45	52 80	1 35	5 30		59 45	1,160 35
Octo.	98 95	18 95	11 75		129 65	45 90	15 20	6 05		67 15	448 15	32 05	44 85		525 05	95 25	2 75	9 50		107 45	829 35
Nov.	109 10	28 75	13 55		151 40	20 75	6 70	2 75		30 20	335 10	12 30	12 35		359 75	30 70	1 55	3 05		35 30	576 65
Dec.	43 75	12 35	5 55		61 65	99 30	32 05	13 10		144 45	673 80	60 60	67 45		801 55	57 05	1 85	5 70		64 60	1,072 55
1874.																					
Jan'y	44 15	15 05	5 95		65 15	51 55	17 00	6 80		75 35	131 45	11 75	13 15		156 35						296 85
Feb'y	456 35	154 75	58 60		669 70	557 85	185 15	75 30		818 30	336 65	33 70	33 75		404 10	91 85	9 25	9 25		110 35	2,002 45
M'ch	981 85	338 20	131 65		1,451 70	521 65	170 55	68 30		760 50	1,937 85	192 35	194 60		2,324 80	106 25	10 65	10 55		127 45	4,664 45
April	1,060 30	350 75	140 85		1,551 90	384 15	126 75	50 75		561 65	1,387 05	138 60	135 45		1,661 10	221 20	22 05	22 05		265 30	4,039 95
Forward	16,140 43	2,823 81	1,527 76		20,492 00	9,727 80	2,631 55	1,102 65		13,462 00	21,988 25	810 40	1,725 00		24,523 65	2,114 85	84 15	204 40		2,403 40	60,881 05

Date.	Drainage collections.				Drainage collections in separate districts.						Returns made to the city in warrants & currency.				
	Assessment.	Interest.	Sheriff's costs.	Total.	1st.	2nd.	3d.	4th.	Sheriff's costs.	Total.	Face warrants.	Interest.	Total.	In currency.	Total.
F'rd	83,600 06	20,417 79	1,244 50	105,262 35	22,755 25	24,679 20	36,882 40	19,701 00	1,244 50	105,262 35	53,474 32	10,614 27	64,088 59	41,173 76	105,262 35
1887.															
Nov. 5	63 70	8 00		71 70	51 70			20 00		71 70				71 70	71 70
Dec. 8	56 80	25 90		82 70	7 20	38 45	12 00	25 05		82 70				82 70	82 70
" 30	61 95	24 25		86 00	47 35	10 60	28 05			86 00				86 00	86 00
	83,782 31	20,475 94	1,244 50	105,502 75	22,861 50	24,728 25	36,922 45	19,746 05	1,244 50	105,502 75	53,474 32	10,614 27	64,088 59	41,414 16	105,502 75

RECAPITULATION.

Assessment	83,782 31	In the 1st	22,861 50
Interest	20,475 94	Do. 2nd	24,728 25
		Do. 3d	36,922 45
		Do. 4th	19,746 05
	104,258 25		104,258 25
	1,244 50		1,244 50
	105,502 75		105,502 75

RECAPITULATION.

Paid in warrants (principal)		53,474 32
Do. do. (interest)		10,614 27
Total in drainage warrants		64,088 59
Paid in currency		41,414 16
		105,502 75

	First draining district.					Second draining district.					Third draining district.					Fourth draining district.					
	Assessment.	Interest.	10 p'r ct.	Costs *fi. fa.*	Total.	Assessment.	Interest.	10 p'r ct.	Costs *fi. fa.*	Total.	Assessment.	Interest.	10 p'r ct.	Costs *fi. fa.*	Total.	Assessment.	Interest.	10 p'r ct.	Costs *fi. fa.*	Total.	Te-total.
Bro't forward	16,140 43	2,823 81	1,527,76		20.492 00	9,727 80	2,631 55	1,102 65		13,462 00	21,988 25	810 40	1,725 00		24,523 65	2,114 85	84 15	204 40		2,403 40	60,881 05
1874.																					
May	1,215 50	404 15	162 00		1,781 65	931 45	288 75	126 25		1,346 45	1,149 70	114 60	114 60		1,378 90	264 05	26 05	26 05		316 15	4,823 15
June	1,189 45	334 90	150 45		1,674 80	1,118 85	258 35	73 50		1,450 70	1,381 35	138 05	138 05		1,657 45	145 00	14 10	14 45		173 55	4,956 50
July	925 20	307 50	122 95		1,355 65	171 35	56 95	22 55		250 85	932 40	94 95	94 95		1,122 30	197 50	19 75	19 75		237 00	2,965 80
Aug.	783 05	261 30	104 35		1,148 70	224 95	75 05	29 90		329 90	827 75	82 55	82 55		992 85	96 80	9 75	9 75		116 30	2,587 75
Sept.	1,083 60	358 55	144 00		1,586 15	251 55	83 95	33 50		369 00	1,348 00	134 80	134 80		1,617 60	24 20	2 40	2 40		29 00	2,601 75
Oct.	1,321 10	439 10	175 95		1,936 15	472 80	145 90	58 05		676 75	686 70	68 75	68 55		824 00	65 95	6 60	6 60		79 15	3,516 05
Nov.	842 95	227 45	106 05		1,176 45	131 60	43 85	17 55		193 00	462 45	46 35	46 35		555 15						
Dec.	1,305 20	424 45	172 55		1,902 20	244 90	82 70	32 80		360 40	816 70	81 65	81 60		979 95						
1875.																					
Jan'y	1,726 70	524 10	209 85		2,460 65	151 50	50 60	20 00		222 10	156 55	15 80	15 70		188 05	45 75	4 60	4 60		54 95	2,925 75
Feb'y	373 10	124 35	49 80		547 25	228 80	76 45	30 95		336 20	158 95	15 35	15 85		190 15	27 60	2 80	2 80		33 20	1,106 80
M'ch	833 35	277 80	111 05		1,222 20	296 90	99 05	39 65		435 60	271 85	27 20	27 20		326 25	241 10	24 10	24 10		289 30	2,273 35
April	757 95	252 45	86 15		1,096 55	76 50	25 40	8 15		110 05	839 30	84 00	83 95		1,007 25	533 95	52 60	53 15		639 70	2,853 55
May	312 10	104 05	41 55		457 70	228 10	76 15	26 55		330 80	1,221 45	113 35	112 70		1,447 50	608 40	52 75	53 85		715 00	2,951 00
June	6,466 05	1,972 55	122 50		8,561 10	430 45	143 50	13 10		587 05	2,054 40	231 95	122 05		2,408 40	1,293 75	129 60	75 25		1,498 60	13,055 15
July	3,042 35	1,128 25	415 00		4,585 60	867 35	346 70	122 85		1,336 90	1,452 85	248 40	166 25		1,867 50	1,097 10	109 00	108 90		1,315 00	9,105 00
Aug.	5,328 95	1,998 35	724 15		8,051 45	2,499 35	1,008 60	320 20		3,828 15	12,316 75	1,479 95	882 40		14,679 10	3,678 40	513 25	392 65		4,584 30	31,143 00
Sept.	15,255 20	1,334 40	1,037 50		17,627 10	1,253 10	530 60	161 50		1,945 20	4,513 20	1,060 70	555 90		6,129 80	474 40	82 90	55 10		612 40	26,314 50
Octo.	3,551 00	1,667 55	523 95		5,742 50	739 65	419 60	118 45		1,277 70	4,627 70	1,142 15	572 25		6,342 10	1,274 15	245 45	151 65		1,671 25	15,033 55
Nov.	6,246 15	3,088 00	935 10		10,269 25	1,173 55	560 45	178 05		1,912 05	3,910 95	940 15	482 50		5,333 60	1,069 90	124 65	111 50		1,306 05	18,820 95
Dec.	1,923 70	952 30	287 05		3,163 05	1,301 20	676 05	199 60		2,176 85	3,538 60	861 75	437 65		4,838 00	368 35	57 20	41 45		467 00	10,644 90
1876.																					
Jan'y	249 95	120 30	37 05		407 30	341 45	125 30	41 45		508 20	535 55	136 70	63 95		736 20	216 35	42 50	25 90		284 75	1,936 45
Feb'y	65 95	31 95	9 75		107 65	88 15	42 30	13 05		143 50	106 95	26 40	13 25		146 60	69 60	11 95	8 15		89 70	487 45
M'ch	166 95	84 15	25 05		276 15	67 95	34 80	10 40		113 15	427 20	108 90	53 25		589 35	42 05	7 45	4 90		54 40	1,033 05
Apr.	719 85	239 20	95 70		1,054 75	642 25	304 20	94 60		1,041 05	1,780 35	445 40	223 80		2,449 55	1,690 80	322 60	203 35		2,216 75	6,762 10
May	185 80	93 45	27 95		307 20	149 20	72 25	22 50		243 95	1,772 50	440 00	220 15		2,436 65	4,834 15	968 20	582 00		6,384 35	9,372 15
June	284 90	143 15	43 55		471 60	1,203 95	413 55	176 30		1,793 80	695 90	171 25	86 10		953 25	1,482 55	250 50	172 00		1,905 05	5,123 70
July	409 35	201 60	61 25		672 20	67 55	34 90	10 30		112 75	1,172 65	281 30	146 00		1,599 95	10,026 90	208 65	1,025 95		11,261 50	13,646 40
Aug.	1,180 65	572 65	177 20	89 20	2,019 70	425 10	264 65	68 95		758 70	1,443 35	366 20	180 20		1,989 75	849 60	170 45	102 00		1,122 05	5,890 20
Sept.	418 35	212 60	62 85		693 80	442 80	193 40	62 90		699 10	618 40	154 80	77 45		850 65	802 05	160 15	96 30		1,058 50	3,302 05
Oct.	128 75	65 85	19 50		214 10	925 15	382 65	130 10		1,437 90	343 60	62 70	40 50		446 80	111 05	22 30	13 35		146 70	2,245 50
Nov.	301 85	149 40	45 25		496 50	1,062 60	499 00	156 45		1,718 05	387 15	98 80	48 60		534 55	46 00	8 25	5 45		59 70	2,808 80
Dec.	182 95	94 15	27 70		304 75	693 40	346 65	104 75		1,144 60	105 25	26 80	11 65		143 70	162 35	33 20	19 00		214 55	1,807 60
	74,918 33	21,013 81	7,842 51	89 20	103,863 85	28,631 05	10,393 85	3,627 55		42,652 45	74,044 70	10,116 10	7,125 75		91,286 55	33,954 65	3,767 90	3,616 75		41,339 30	279,142 15

	First draining district.					Second draining district.					Third draining district.					Fourth draining district.					
	Assessment.	Interest.	10 p'r ct.	Costs *fi. fa.*	Total.	Assessment.	Interest.	10 p'r ct.	Costs *fi. fa.*	Total.	Assessment.	Interest.	10 p'r ct.	Costs *fi. fa.*	Total.	Assessment.	Interest.	10 p'r ct.	Costs *fi. fa.*	Total.	Te-total.
Bro't forward	74,918 33	21,013 81	7,842 51	89 20	103,863 85	28,631 05	10,393 85	3,627 55		42,652 45	74,044 70	10,116 10	7,125 75		91,286 55	33,954 65	3,767 90	3,616 75		41,339 30	279,142 15
1877.																					
Jan'y	41 10	21 85	6 15		69 10	795 40	324 55	111 90		1,231 85	250 75	62 05	31 30		344 10						1,648 05
Feb'y	8 95	3 80	1 20		13 95	1,366 15	519 00	187 75		2,072 90	437 30	105 90	54 75	4 10	602 05	76 95	15 40	9 25		101 60	2,790 50
March	139 95	72 30	21 15		233 40	480 60	189 60	67 25		737 45	608 85	157 35	76 70		842 90	52 55	10 55	6 35		69 45	1,883 20
Apr.	597 45	31 25	62 85		691 55	62 70	31 35	9 50		103 55	357 60	86 05	43 35		487 00						1,282 10
May	237 00	118 00	35 90	1 10	392 00	277 90	119 75	39 10		436 75	908 35	227 90	112 10	6 00	1,254 35	15 85	3 15	1 90		20 90	2,104 00
June	299 10	125 75	42 50		467 35	2,193 80	568 95	161 20		2,923 95	401 40	99 90	48 90		550 20	27 85	6 80	3 50		38 15	3,979 65
July	454 50	179 80	54 85		689 15	322 15	152 15	48 10		522 40	697 75	140 30	59 75		897 80	231 45	18 55	4 85		254 85	2,364 20
Aug.	448 35	211 15	65 60	12 10	737 20	877 55	392 20	128 05		1,397 80	488 35	113 15	57 25	12 30	671 05	9 75	5 00	1 50	3 60	19 85	2,825 90
Sept.	383 45	109 50	49 45		542 40	146 30	72 60	22 85		241 75	383 65	94 25	41 55	1 20	520 65	65 35	16 35	8 10		89 80	1,394 60
Oct.	479 30	235 75	71 85	4 10	791 00	244 55	69 00	36 80		350 35	354 70	75 65	38 80		469 15	51 40	13 80	6 50		71 70	1,682 20
Nov.	1,028 80	230 25	125 60	70 50	1,455 15	240 30	120 30	36 15		396 75	548 60	113 65	65 50	3 60	731 35	48 75	13 65	6 10		68 50	2,651 75
Dec.	582 05	100 95	33 80		716 80	93 20	25 90	10 95		130 05	600 45	126 45	44 10	8 45	779 45						1,626 30
1878.																					
Jan.	1,297 65	75 70	145 15	8 70	1,527 20	111 30	55 60	16 65		183 55	355 55	89 45	44 55	3 50	493 05	155 15	26 15	14 15		195 45	2,399 25
Feb'y	816 55	21 15	6 35		844 05	55 35	26 85	8 60		90 80	449 40	113 35	56 15	3 60	622 50						1,557 35
Mar.	88 15	39 25	13 25		140 65	85 55	41 85	9 75		137 15	344 60	80 20	39 65		464 45	5 70	1 65	75		8 10	750 35
Apr.	111 85	52 50	16 35	48 25	228 95	106 05	53 35	15 90		175 30	95 55	22 15	10 70	3 55	131 95	72 00	13 10	8 25		93 35	629 55
May	224 70	112 30	33 70		370 70	228 50	53 50	28 45		310 45	225 55	56 75	28 25	3 50	314 05	195 05	49 00	24 40		268 45	1,263 65
June	620 05	79 35	69 90	3 50	772 80	59 10	31 40	9 10		99 60	150 90	38 90	18 15	3 60	211 55						1,083 95
July	81 00	47 50	12 80	6 70	148 00	221 95	100 95	32 50		355 40	176 10	44 75	22 25		243 10	114 50	36 65	15 15	7 00	173 30	919 80
Aug.	47 10	24 95	7 15	3 75	82 95	163 95	83 95	24 90	5 00	277 80	39 95	12 90	5 75		58 60						419 35
Sept.	6 65	2 35	1 00		10 00	11 75	1 75			13 50	118 70	33 25	15 20	3 15	167 15	108 25	27 85	13 65		150 35	341 00
Oct.	21 40	10 70	3 20	3 50	38 80	8 00	4 60	1 25		13 85	70 45	21 40	9 25		104 25	5 75	1 95	75		8 45	165 35
Nov.						217 05	108 30	32 50	4 00	361 85	123 90	31 40	15 60		170 90	38 55	12 85	5 10		56 50	589 25
Dec.	26 05	13 00	3 90		42 95	154 65	62 80	21 00	20 65	259 10	111 50	30 25	14 15		155 90						457 95
1879.																					
Jan'y	269 80	5 00	27 45		302 25	278 60	111 90	43 15	21 70	455 35	53 65	18 95	7 20	3 60	83 40	182 05	46 75	22 85		251 65	1,092 65
Feb.	153 50	14 60	23 10		191 20	153 55	85 15	28 30		266 90	7,685 60	1,987 70	964 90		10,638 20	462 10	50 80	55 35		568 25	11,664 55
Mar.	58 50	31 25	9 00	3 60	102 35	428 45	130 25	57 00		615 70	871 25	217 55	108 80	12 00	1,209 60	223 60	59 55	28 15		311 30	2,238 95
Apr.	189 75	95 50	28 55		311 80	20 60	10 40	3 05		34 05	208 00	69 95	28 15	5 00	311 10	24 45	7 95	3 25		35 65	692 60
May	104 55	49 60	14 70	2 50	171 35	127 65	60 25	16 95		204 85	2,394 80	57 45	22 35	5 00	2,479 60	44 40	5 50	1 90		51 80	2,907 60
June	2,357 30	130 75	248 65	2 50	2,739 20	60 65	34 10	10 05	5 00	109 80	204 35	69 90	26 75	7 55	308 55	44 25	14 55	5 85		64 65	3,222 20
July	235 40	74 85	30 85		341 10	139 05	70 75	21 30		231 10	45 70	16 25	6 15		68 10	265 70	87 60	34 50	26 75	414 55	1,054 85
Aug.	36 85	17 70	5 75		60 30	263 65	125 25	37 75	20 60	447 25	185 95	30 80	17 20		233 95	274 10	80 20	34 60	1 75	390 65	1,132 15
Sept.						5 25	3 50	85		9 60	608 90	140 40	74 85	4 60	828 75	186 00	34 55	22 05		242 60	1,080 95
Octo.	301 95	18 10	5 35		325 40	119 00	18 60	5 50	9 40	152 50	814 20	107 30	46 70	7 20	975 40	416 00	11 40	4 00		431 40	1,884 70
	86,665 08	23,370 26	9,119 56	260 00	119,414 90	38,751 30	14,254 25	4,911 55	86 35	58,003 45	95,417 60	14,809 70	9,382 50	101 50	119,710 70	37,352 75	4,439 20	3,959 50	39 10	45,790 55	342,919 60

1057

	First draining district.					Second draining district.					Third draining district.					Fourth draining district.					
	Assessment.	Interest.	10 per ct.	Costs *fi. fa.*	Total.	Assessment.	Interest.	10 p'r ct.	Cost *fi. fa.*	Total.	Assessment.	Interest.	10 p'r ct.	Costs *fi. fa.*	Total.	Assessment.	Interest.	10 p'r ct.	Costs *fi. fa.*	Total.	Te-total.
Bro't forward	86,665 08	23,370 26	9,119 56	260 00	119,414 90	38,751 30	14,254 25	4,911 55	86 35	58,003 45	95,417 00	14,809 70	9,382 50	101 50	119,710 70	37,352 75	4,439 20	3,959 50	39 10	45,790 55	342,919 60
1879.																					
Nov.	26 40	13 05	3 95		43 40						99 50	28 60	12 25		140 35	89 00	31 05	12 00		132 05	315 80
Dec.						10 30	5 30	1 55	8 55	25 70	59 50	20 10	8 25		87 85	87 40	18 10	6 70		72 20	185 75
1880.																					
Jan'y	9 35	4 70	1 40		15 45	63 20	33 65	9 70	11 00	117 55	89 20	30 45	11 95	11 80	143 40	5 60	2 20	80		8 60	285 00
Feb'y	238 00	6 55	1 95		246 50	64 15	34 75	9 80		108 70	232 70	74 30	34 60	7 20	348 80	23 65	8 60	3 25	3 50	39 00	743 00
Mar.	24 15	13 25	3 75	3 50	44 65	45 25	23 35	7 05		75 65	394 50	120 15	51 75	13 70	580 10	83 40	17 50	10 30		111 20	811 60
April	31 05	10 35	4 20	4 30	49 90	17 00	11 30	2 80		31 10	125 95	54 20	18 00	4 50	202 65	171 15	68 20	23 90	19 55	282 80	566 45
May	49 60	31 85	8 15	8 50	98 10	28 15	15 20	4 30		47 65	60 40	24 70	8 55	3 60	97 25	100 30	38 30	13 85	4 00	156 45	399 45
June	168 40	22 70	19 15	9 00	219 25	31 35	12 10	4 25		47 70	68 85	28 95	9 65	3 60	111 05	213 15	19 55	23 85	6 75	263 30	641 30
July	64 65	9 45	7 40		81 50	105 50	34 20	11 95		151 65	134 10	39 25	16 45		189 80	84 25	37 75	12 00		134 00	556 95
Aug.	80 25	40 30	12 25	22 70	155 50	8 95	4 65	1 35		14 95	135 05	39 50	17 25		191 80	4 30	1 75	60		6 65	368 90
Sept.	46 20	20 75	6 70	4 50	78 15	13 55	6 85	2 00		22 40	55 20	23 60	7 85		86 65						187 20
Octo.	62 35	31 15	9 35		102 85	1 00	50	15		1 65	68 60	24 40	9 30		102 30	5 30	2 65	80		8 75	215 55
Nov.	97 90	16 60	11 30	4 50	130 30	47 70	24 10	7 15	9 00	87 95	48 10	14 25	5 55		67 90	100 25	24 10	10 65		135 00	421 15
Dec.	152 85	44 05	14 05		210 95	267 15	61 00	32 50		360 65	69 95	25 45	7 60		103 00	29 20	7 10	2 15		38 45	713 05
1881.																					
Jan'y	84 90	18 75	9 35		113 00	2 55	1 30	45		4 30	25 40	11 20	3 70		40 30	431 10		43 10		474 20	631 80
Feb'y	208 40	66 95	28 75	4 50	308 60	8 75	5 20	1 50		15 45	38 75	14 90	5 80		59 45	5 80	2 90	85		9 55	393 05
M'ch & April	364 02	58 08	4 95		427 05	16 40	8 65	2 55	4 50	32 10	48 50	9 85	3 05		61 40	63 45	9 50	5 95		78 90	599 45
May	19 15	9 55	2 85	5 00	36 55	58 90	29 45	8 95		97 30	26 95	13 65	4 00		44 60						178 45
June & July	65 45	21 30	8 60	3 50	98 85	45 65	22 30	7 80		75 65	37 80	10 05	4 55	4 50	56 90						231 40
August	11 25	6 10	1 80		19 15	32 05	16 20	4 80		53 05	237 75	97 05	35 80		460 60						532 80
Sept. & Octo.	65 80	33 05	9 90	9 00	117 75	71 70	25 95	10 25	9 00	116 90	112 40	48 65	11 05	15 00	187 10	25 85	7 30	2 60		35 75	457 50
Nov.	13 25	6 80	2 00	3 50	25 55						47 15	22 30	6 70		76 15	13 40	6 80	2 00		22 20	123 90
Dec.	5 30	2 65	80		8 75	30 25	15 20	4 65		50 10	40 05	16 95	5 70	4 50	67 20	11 40	5 70	1 70		18 80	144 85
1st d'g dist.	88,553 75	23,858 24	9,292 16	342 50	122,046 65	39,720 80	14,645 35	5,047 05	128 40	59,541 60	97,763 35	15,602 20	9,681 85	169 90	123,217 30	38,860 70	4,748 25	4,136 55	72 90	47,818 40	352,623 95
2nd "	39,720 80	14,645 35	5,047 05	128 40	59,451 60																
3 "	97,763 35	15,602 20	9,681 85	169 90	123,217 30																
4th "	38,860 70	4,748 25	4,136 55	72 90	47,818 40																
Assessment	264,898 60	58,854 04	28,157 61	713 70	352,623 95																
Interest	58,854 04				20,244 65																
10 p'r ct. att'y fees	28,157 61				258,679 10																
F. fa. costs	713 70																				
Total col.	352,623 95	by city			631,547 70																

Collected by city.
Do. do. com'rs 1st district.
Do. do. do. 2d do.

I certify this statement to be a correct copy from the books in the bureau of drainage.
New Orleans, April 4th, 1888.

WM. T. MAYO, *Book-Keeper.*

RAISED LEVEE

Upper Pontchartrain Branch

NEW ORLEANS CANAL & BAYOU

ORLEANS TAIL RACE

Florida Walk

PORTER AVENUE Canal & pontoon bridge

MONROE AVE

PARK

FAIR GROUNDS

St Bernard

FLORIDA

WALK (3rd block)

Bayou Gentilly

Gentilly Ridge

Gentilly Ridge

Bayou Gentilly

Bayou Gentilly

Bayou Gentilly

No. 1284
Geodetic Map
of
City of New Orleans
Public

17

Mississippi River

U.S. Naval Hospital

U.S. Marine Hospital

U.S. Arsenal

U.S. Barracks

Canal St.

Esplanade Ave.

Bayou St. John

Bayou Road

Gentilly Road

Florida Ave.

Pontchartrain R.R.

Milneburg Lake

Lake Pontchartrain

FAIR GROUNDS

FLORIDA

WALK 5th Ward

St. Claude

Bayou St. John

Bayou Road

Gentilly Road

Esplanade Ave.

Canal

Claiborne

Napoleon

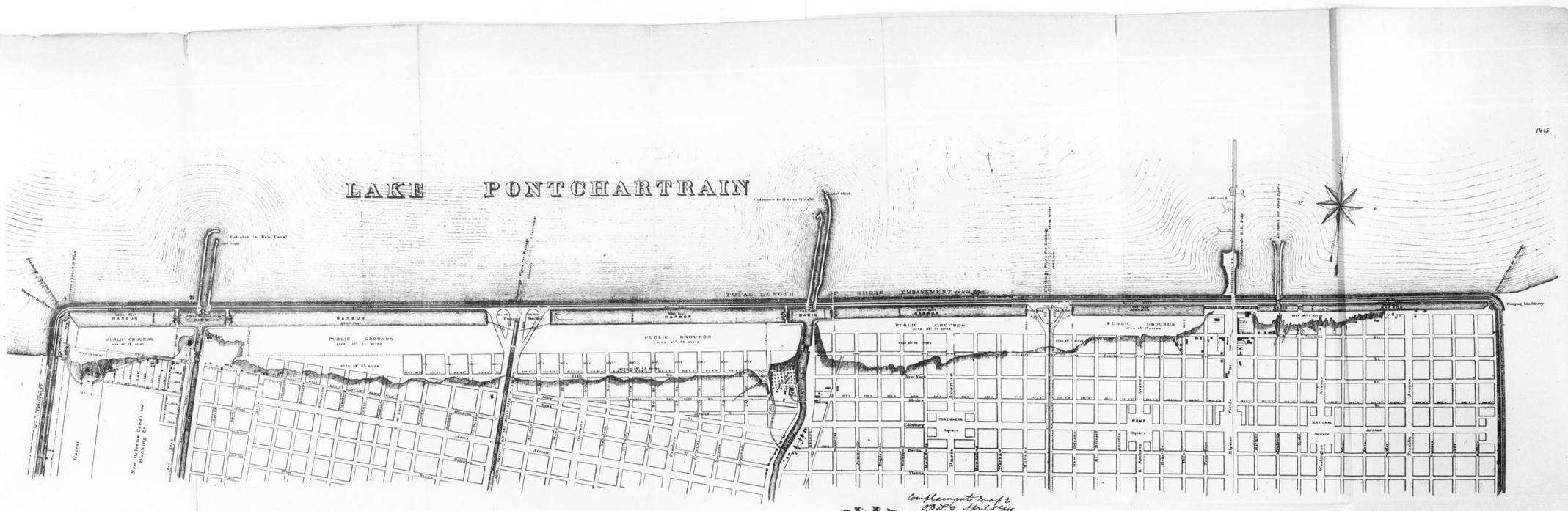
Pontchartrain R.R.

Shell Road

FOUCHERVILLE

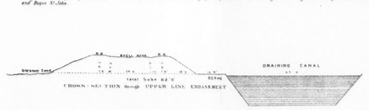
No. 1234
Reake et al
vs
City of New Orleans
} D 1416

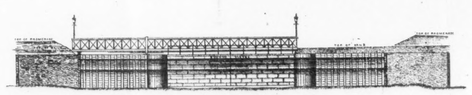
17



1415

NOTE The original design for the Revetment or Embankment contemplated only that it, as now being constructed of wood and about four feet of it is required between A.B. Work was commenced in August 1871 but the necessity of not making frequent gratuities. The Harbors and Basins may be required into the draining Canals through outlet pipes with valves wherever drained and refilled with fresh Lake water through the Locks.
The public grounds should be filled above ordinary tide water, thus securing the necessity of closing the Lock Gates except in case of extreme high water or when it is necessarily tied in at short duration. It is intended to reduce the drainage swamps through the embankment and into the lake a sufficient distance to improve the drainage of the City and swamps now receive, as commenced the many years past when the drainage of the City was discharged into the Lake from the Upper end Bayou St. John.



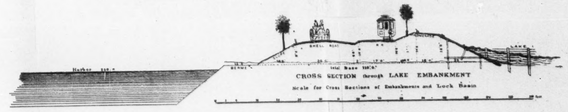

CROSS SECTION THROUGH LOCK BASIN
showing
HEAD VIEW OF HEAD GATE AND SWING BRIDGE

Drawn by Alex Behrmann

PLAN
OF
PROPOSED IMPROVEMENTS
FOR THE
LAKE SHORE FRONT
of the
CITY OF NEW ORLEANS
Showing
LOCATION OF EMBANKMENT, PUMPING MACHINERY, LOCKS, HARBORS, RAIL AND SHELL ROADS AND PUBLIC GROUNDS.
APRIL 1873.

Complement map to 1356. April 1874

No 1234 Chalk Mat. City of No. } p 1415



W.H. Bell, City Surveyor.

18

Complainant's Exhibit No. 1 to Dep. of [illegible]

LAKE PONTCHARTRAIN

Proposed Protection Levee
abt 9772 feet
about 6685 feet
1325

CONTENTS.

First Section.

Between River, Julia St., New Orleans Canal, Metairie Ridge, Bayou St. John, Canal Carondelet and Toulouse St.	2218	
Between Ridge, New Orleans Canal Lake and Bayou St. John	3212	
Total area of First Section		5430

Second Section.

Between River, Upper Protection Levee, Melpomene Ridge, New Orleans Canal and Julia St.	8650	
Between Ridge, Upper Protection Levee, Lake and New Orleans Canal	875	
Total area of Second Sections		9525

Third Section.

Between River, Toulouse St. Canal, Carondelet, Ridge and Lafayette Avenue to Florida Walk	4216	
Between Bayou St. John, Lake, Peoples Avenue and Ridge	3131	
Total area of Third Section		7347

Fourth Section.

Between Lafayette Avenue, Florida Wall, lower Limits and River	3724	
Total area Acres		26026.

12 miles Old canals cleaned & widened
13 Miles of New Canal Excavated

Notes
Designate Center Lines of Streets
do Prolongations of Center Lines
do Present Canals
do Proposed Canals
do Present Levees

Excavations and Levee work from May 19th 1871 to July 1876.

Old canals widened and deepened.
New canals excavated.
Roads and Embankments above overflow or storm water mark.

Note The City of New Orleans should have Exclusive right and control of the Bayou St. John, Canal Carondelet, and the New Canal.

FIRST SECTION
SECOND SECTION
THIRD SECTION
FOURTH SECTION

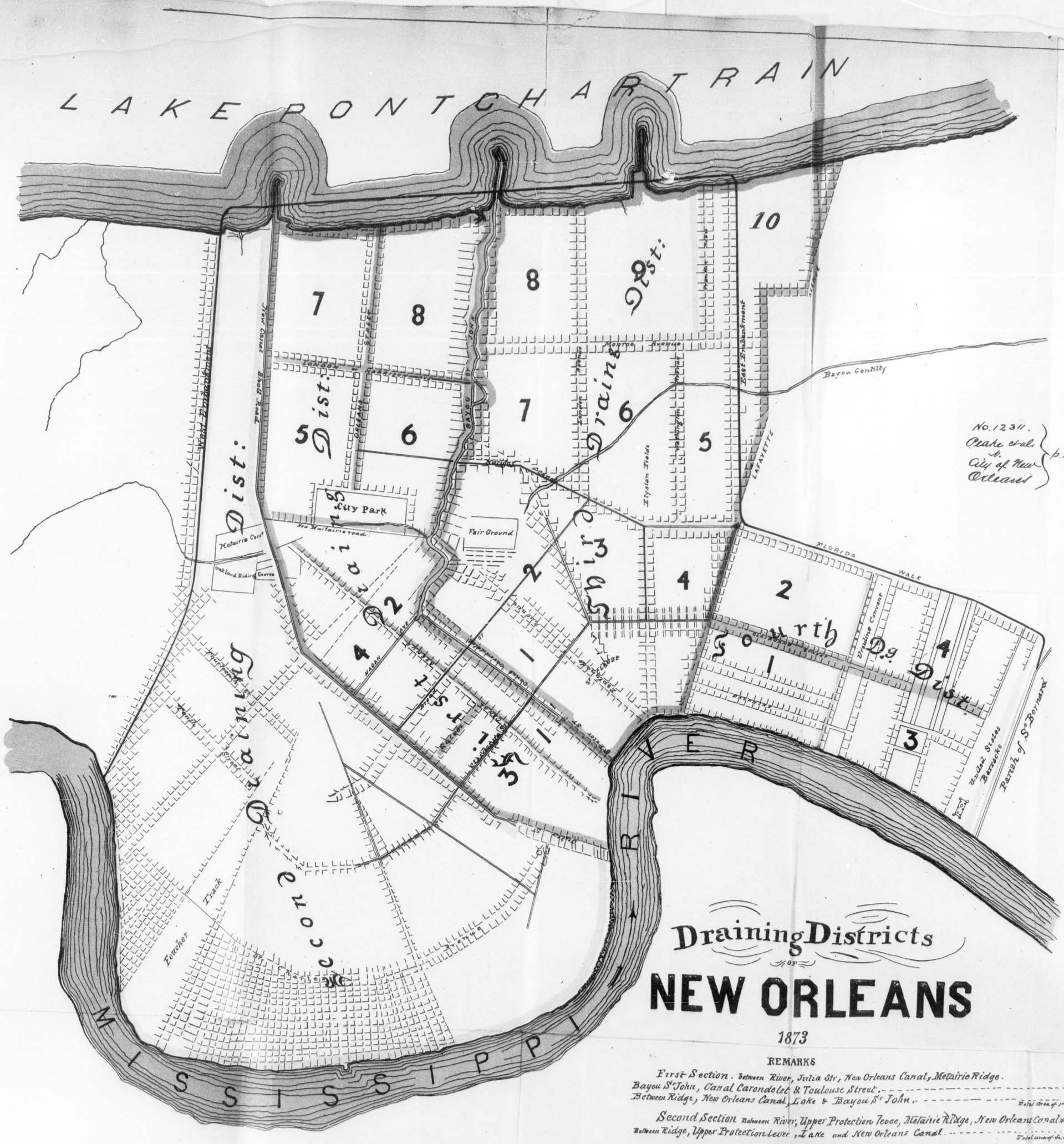
MISSISSIPPI RIVER

SKETCH OF DRAINING SECTIONS OF NEW ORLEANS SHOWING PRESENT CANALS WITH PROPOSED PROTECTION LEVEES AND RESERVOIR CANALS MAY 1878

No. 1234
Drake et al
v.
City of New Orleans
p. 18

Drawn by ALEX. DEBRUNNER

W. H. Bell, City Surveyor



No. 12311.
Cleake et al.
v.
City of New Orleans
p. 19

Draining Districts for NEW ORLEANS

1873

REMARKS

First Section. Between River, Julia Str, New Orleans Canal, Metairie Ridge. Bayou St. John, Canal Carondelet & Toulouse Street 2218
Between Ridge, New Orleans Canal, Lake & Bayou St. John ..... 3212 Total Area of 1st Section 5430

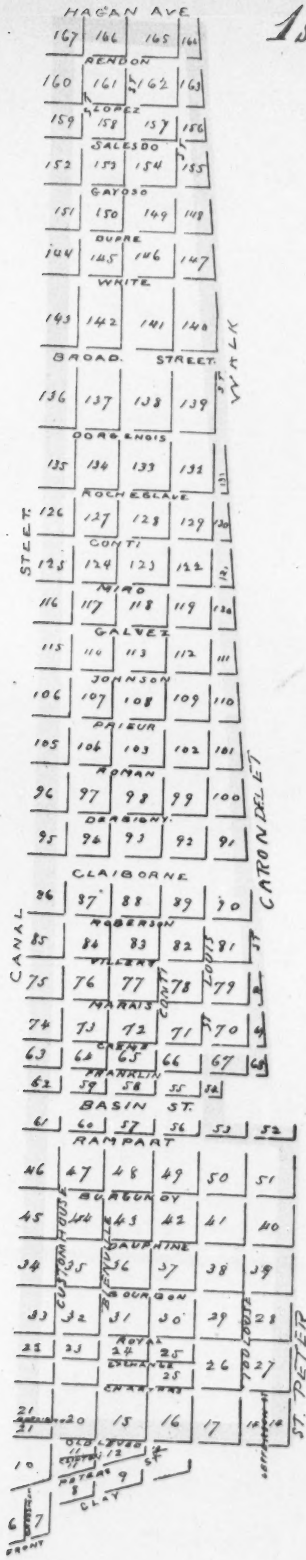
Second Section Between River, Upper Protection levee, Metairie Ridge, New Orleans Canal & Julia 8650
Between Ridge, Upper Protection Levee, Lake and New Orleans Canal ..... 875 Total area of 2nd Section 9525

Third Section Between River, Toulouse Str, Canal Carondelet, Ridge, Lafayette Ave, to Florida Walk 4216
Between Bayou St. John, Lake & Peoples Ave and Ridge ..... 3131 Total area of 3rd Section 7347

Fourth Section Between Lafayette Ave., Florida Walk, Lower limit & River ..... 3726 Total Area 26026 Acres.

Dec. 10th 1873.

1st Draining Dist
Sect. No. 1.



No. 1234.
Peake et al.
vs
City of New Orleans.
} p. 20

$ 51.646.75

1st Draining Dist

No 2.

No. 1234.
Peake et al
to
City of New
Orleans
} p. 21

$ 45309.99.

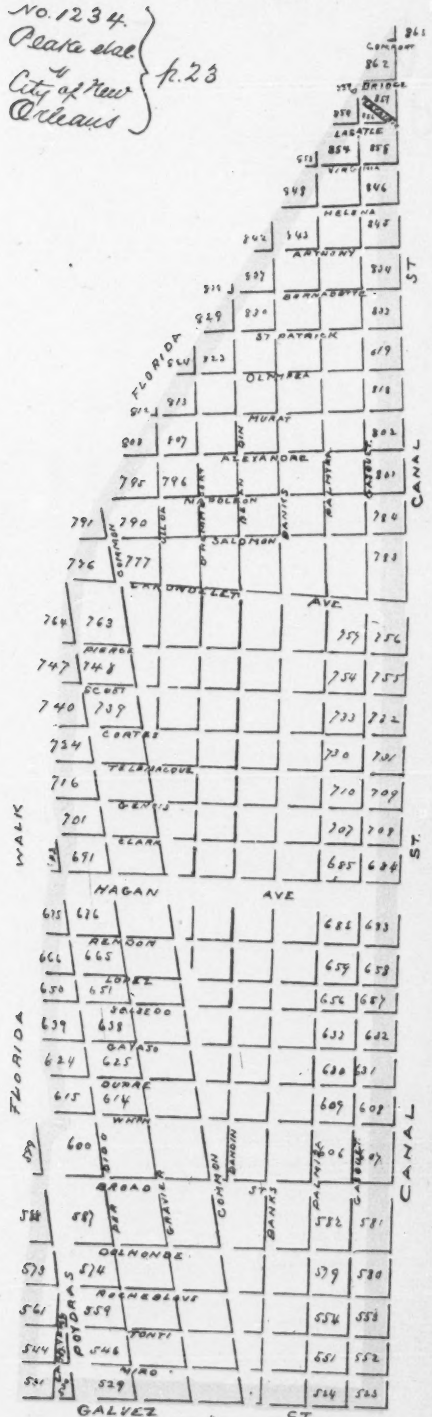
1st draining Dist.
No 3.

No. 1234
Cleake et al
v
City of New Orleans
fn 22

1st drain. Dist.

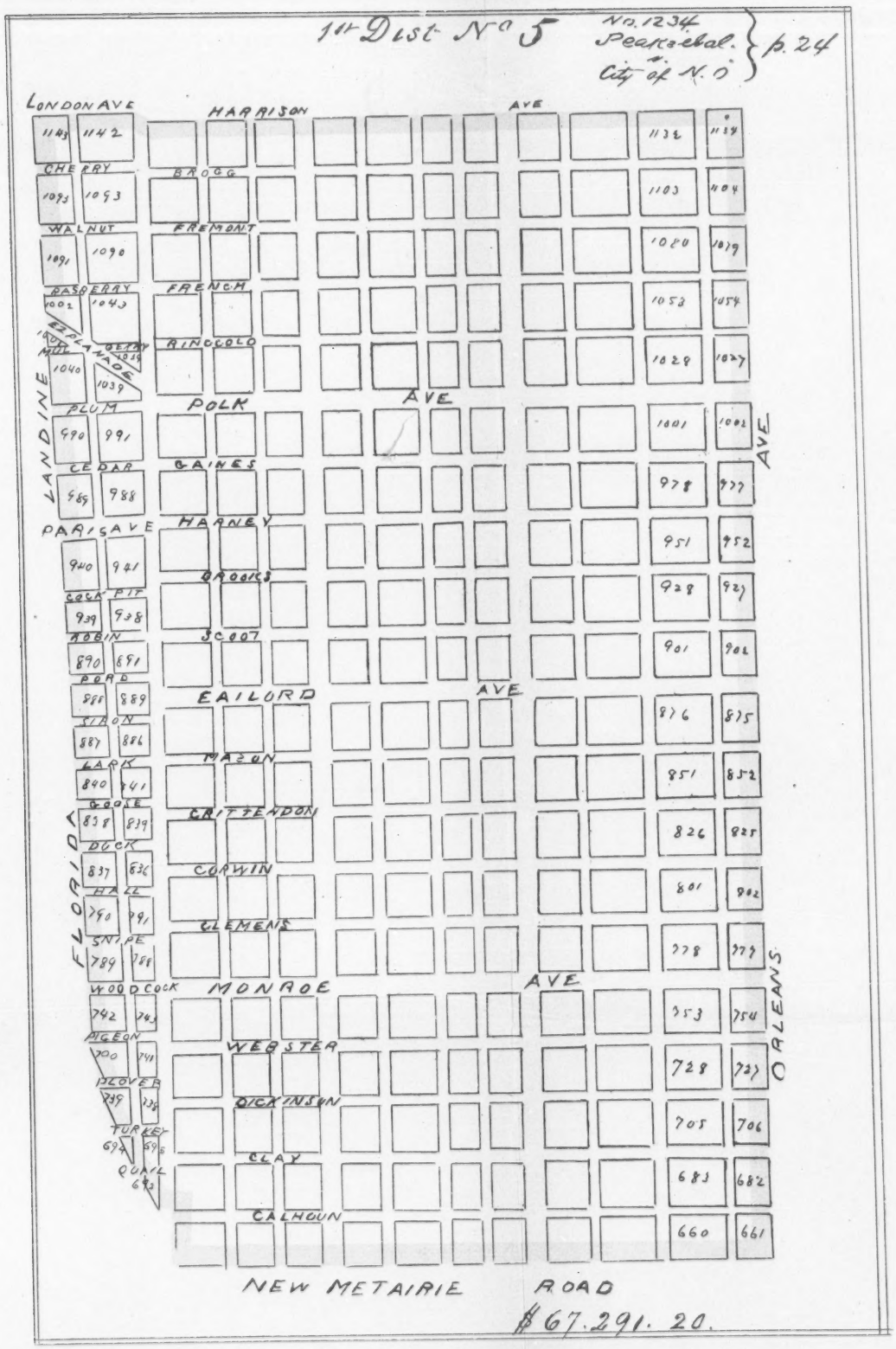
No 4.

No. 1234.
Peake et al
vs
City of New Orleans
} p. 23



$75.391.32

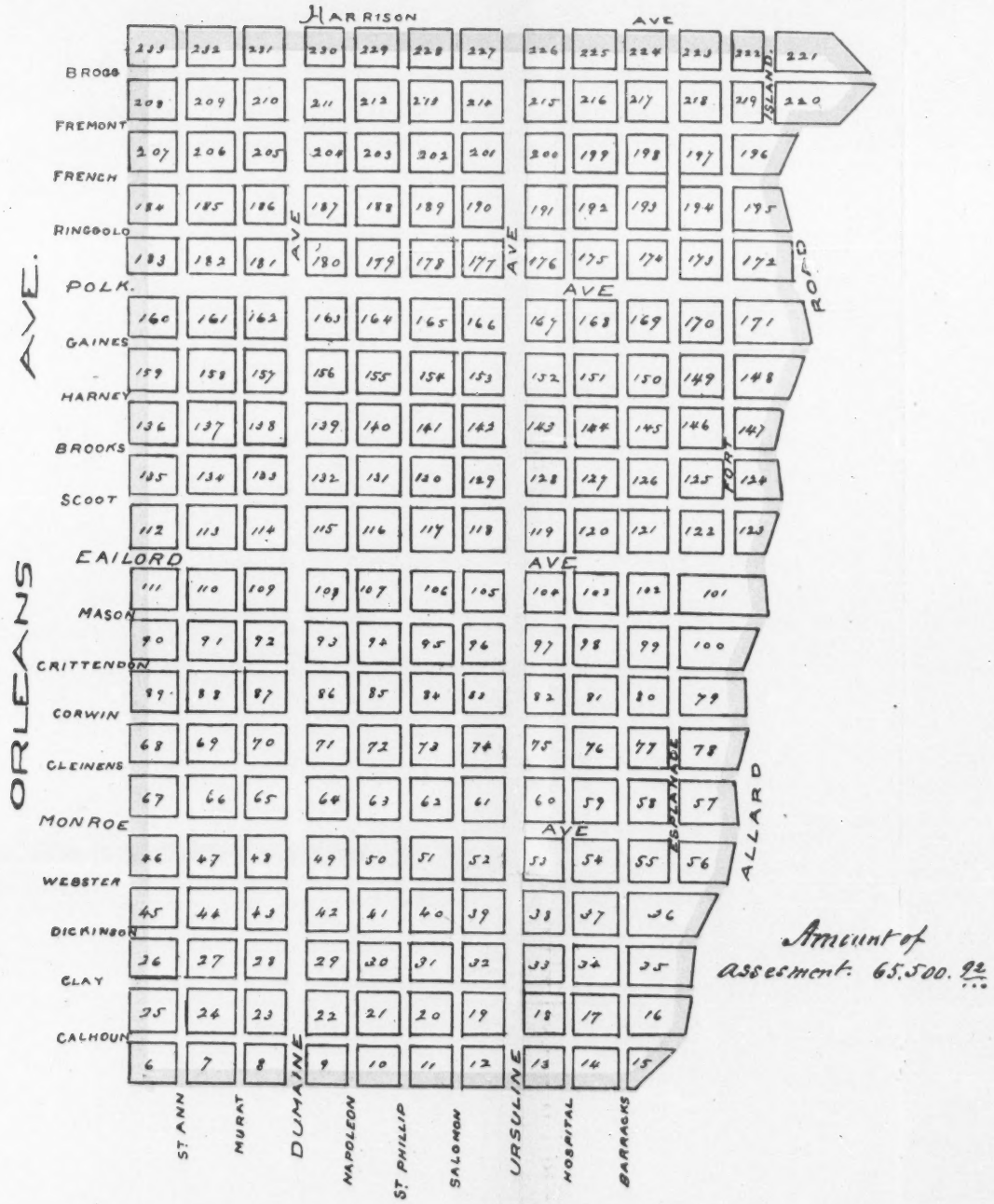
11th Dist. No 5 No. 1234 Pearsebal. City of N.O. } p. 24



#67.291.20.

1st Drainj Dist. No. 6.

No. 1234.
Peake et al.
v
City of N.O.
} b. 25.

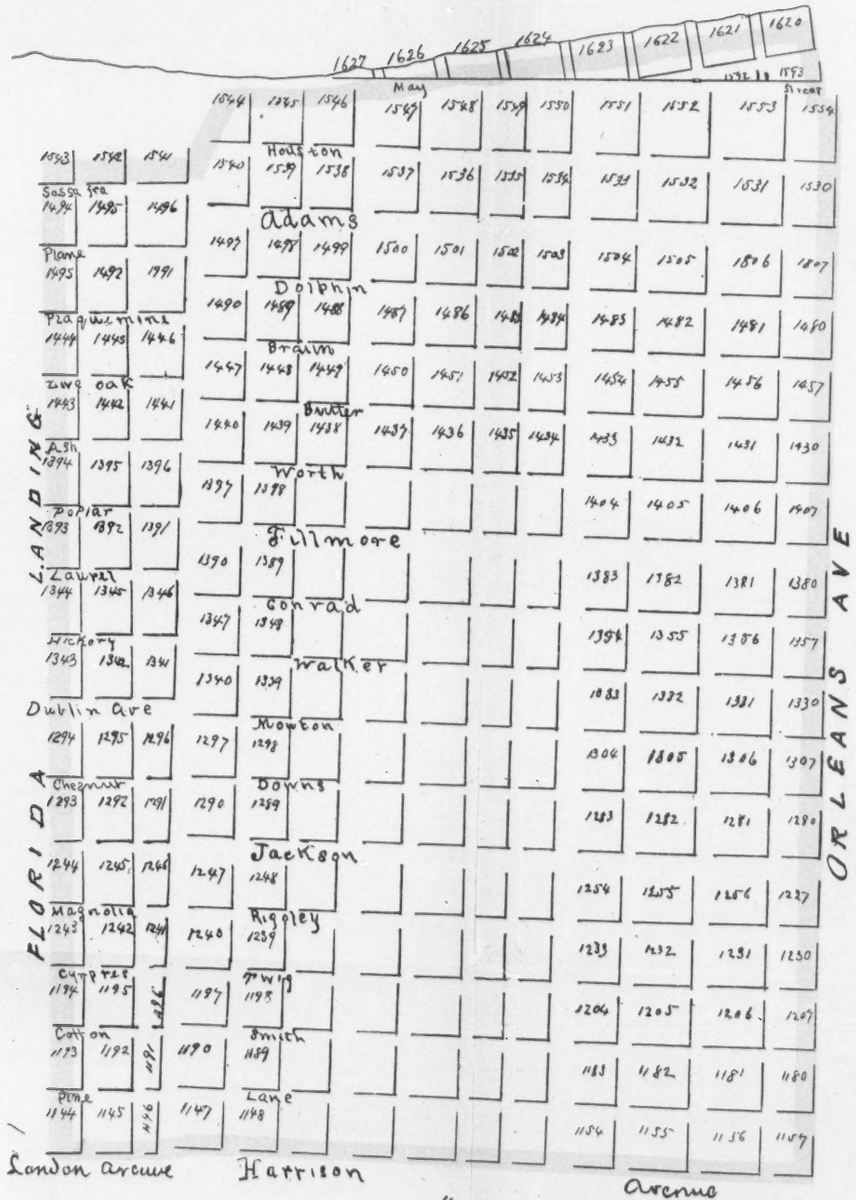


Amount of assesment: 65.500. 92/100

1st. Draining Dist.

No. 1234
Peake et al
v
City of N.O.
} p. 26

No 7

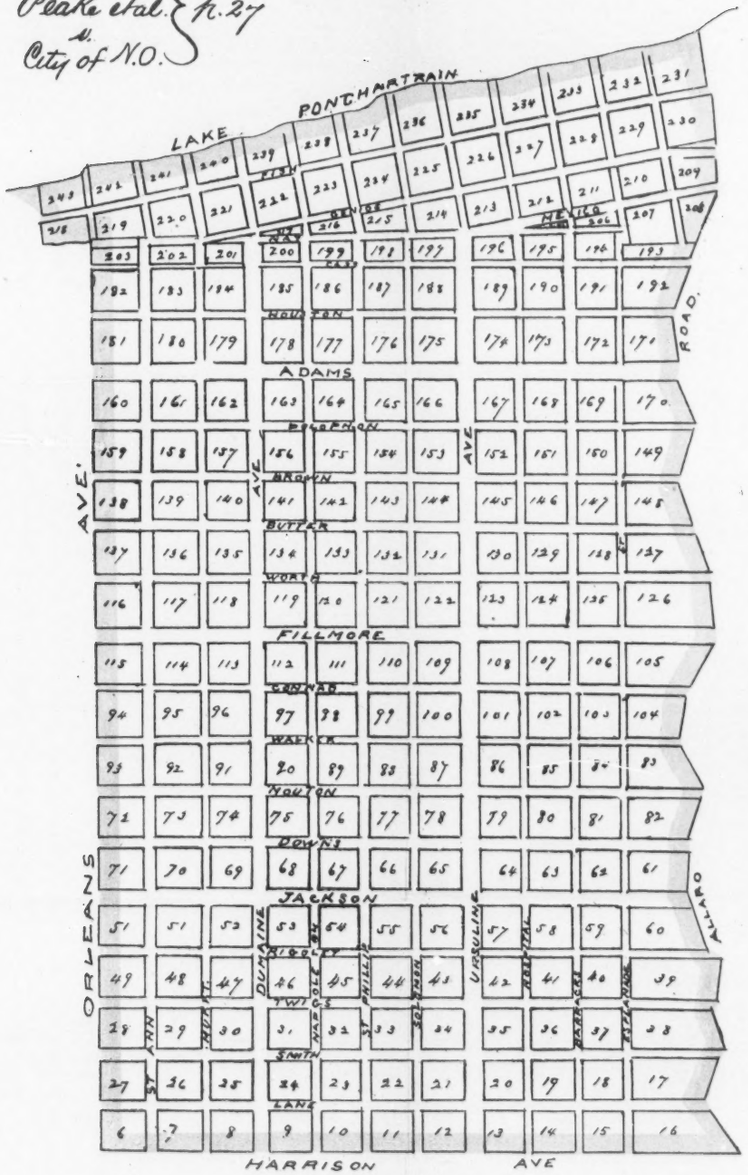


64.455.01.

First Draining Dist. 27.

No. 8.

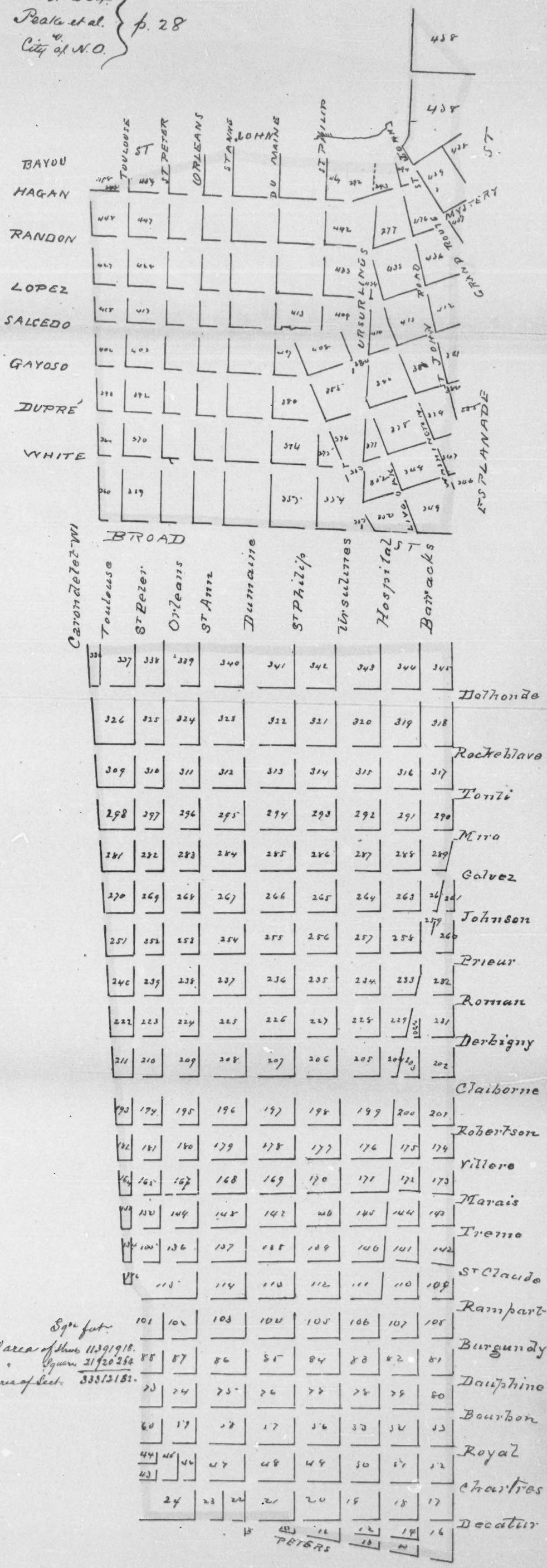
No. 1234.
Peake et al. } p. 27
vs.
City of N.O.



$72.718.47

3d Drawing
No. 1

No. 1234
Peake et al.
vs.
City of N.O.
} p. 28



Sq^re feet.
Total area of Sheet 1139918.
" " Square 21920252
Total area of Sect. 33312182.

3rd Draining Dist.
Sec No 2.
North part

No. 1234
Seake et al
vs.
City of N.O
} p 29

Bayou
Esplanade Avenue
Florida Avenue
Grand Route St John
Gentilly Road
Broad Street
St Bernard Avenue
Claiborne
Roman
Derbigny
Robertson
Villere
Marais
Esplanade
St. Claude St
Rousseau
Dorthonde
Rochelave
Pont
Miro
Galves
Johnson
Prieur
Duayet
Mystery
Encampment
Savage
Swamp
Clara
Orita
Nelson
Clay
Dupre
White
Lopez
Onzaga
Labadie
Aubry
Orleans
Carrollton
Desaix Place
Delery
Bernadotte
Marigny
Fortin
Roman
Derbigny
Villere
Lafaye
Dorgenois
Tonti
Lopez
Lehoby
Johnson
Galves
Miro
Pont
Rochelave
Dorthonde
Rousseau
Broad
Gentilly
Grand Route St John
Florida Avenue
Esplanade
Bayou
Iberville
Bienville
Conti
Toulouse
Orleans
Dumaine
St Louis
St Peter
St Ann
St Philip
Ursulines
Barracks
Levee
Decatur
Governor Nicholls
Kerlerec
Columbus
Derbigny
Roman
Johnson
Galves
Miro
Pont
Rochelave
Dorthonde
Rousseau
Broad
Gentilly
Grand Route St John
Florida Avenue
Esplanade
Bayou
Iberville
Bienville
Conti
Toulouse
Orleans
Dumaine
St Louis
St Peter
St Ann
St Philip
Ursulines
Barracks
Levee
Decatur
Governor Nicholls
Kerlerec
Columbus
Derbigny
Roman
Johnson
Galves
Miro
Pont
Rochelave
Dorthonde
Rousseau
Broad
Gentilly
Grand Route St John
Florida Avenue
Esplanade
Bayou
Iberville
Bienville
Conti
Toulouse
Orleans
Dumaine
St Louis
St Peter
St Ann
St Philip
Ursulines
Barracks
Levee
Decatur
Governor Nicholls
Kerlerec
Columbus

for areas See South part of Sect No 2.

Total area of Streets 9499072
" Squares. 22948120
Total area of Second Section 32447192.

3d Drawing Dist.
No 34 - 35

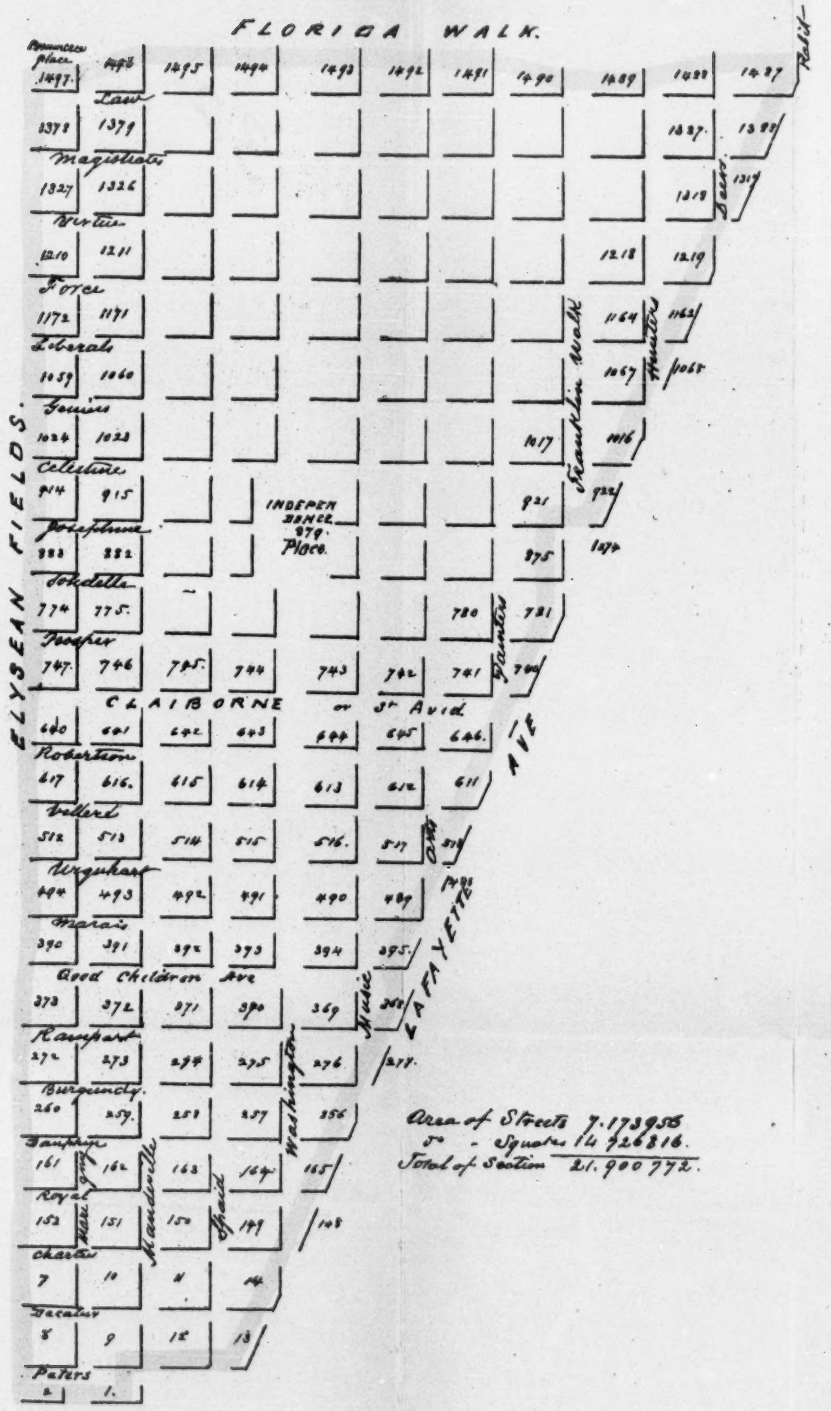
No. 1234
Parke et al
City of N.O.
} p. 30.

MARIGNY
HUMANITY ST
DENUIT
GENTILLY ROAD
TREASURE
HAMBURG
ABUNDANCE
PARIS
AGRICULTURE
AVENUE
INDUSTRY
DUEL
BROAD
HOPE
LAW
MAGISTRATE
AVENUE
WARSAW
VIRTUE
FORCE
LIBERALS
GENIUS
CELESTINE
ST BERNARD
LONDON
JOSEPHINE
SOLIDELLE
PROSPER
CLAIBORNE
ROBERTSON
BELLEVILLE
JURQUART
ANTONIA
ANTHONY
MARAIS
ST CLAUDE
RAMPART
BURGUNDY
DAUPHIN
BOURBON
ROYAL
CHARTRES
BAGATELLE
UNION
FRENCHMAN
ELYSIAN FIELDS
PETERS

Total area of Strel 9033460
" " " " 20325073
Total of section 29358533

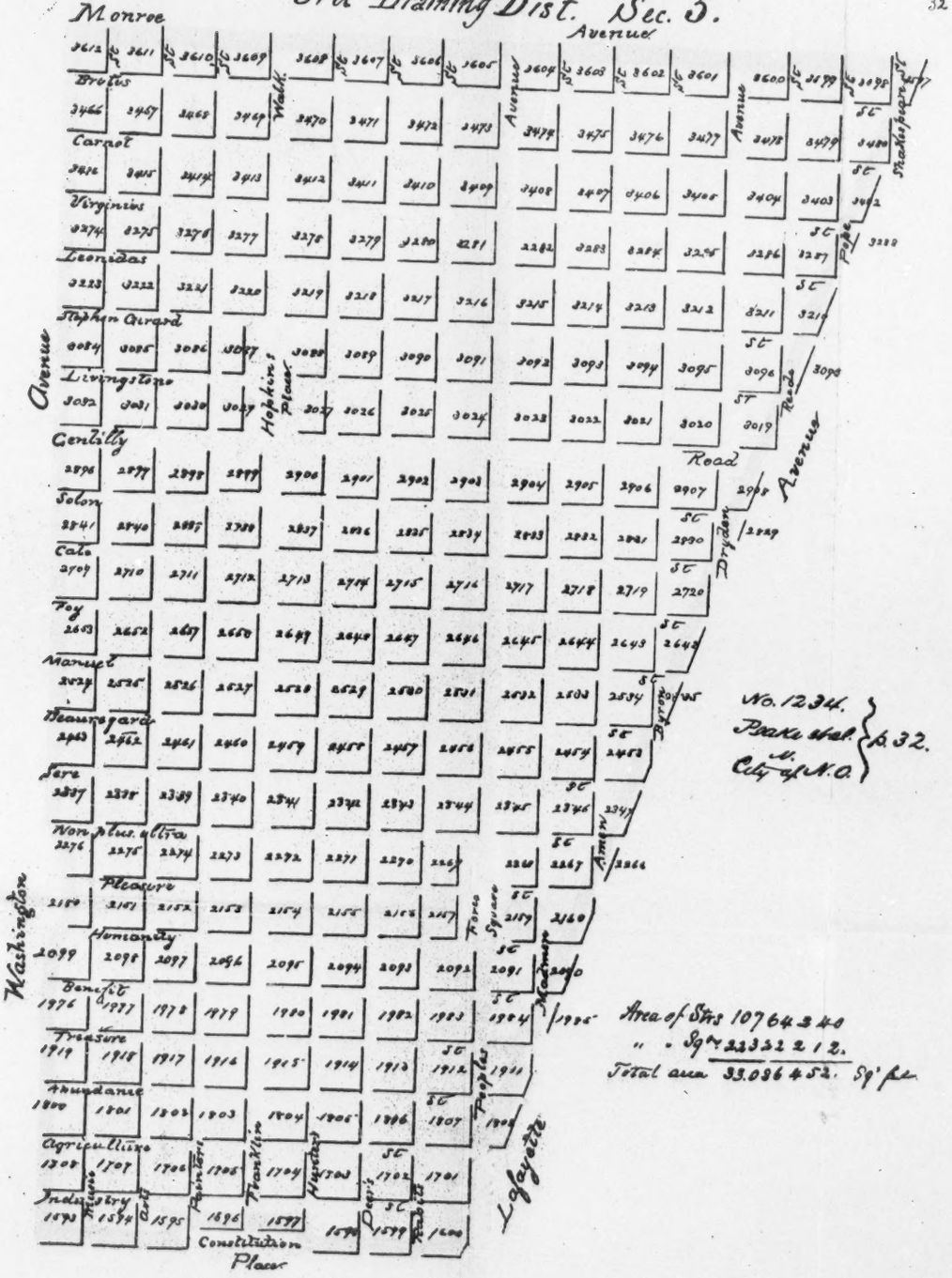
3rd Drain'g Dist. No 4.

No. 1234 Peake et al. vs. City of N.O. } p 31



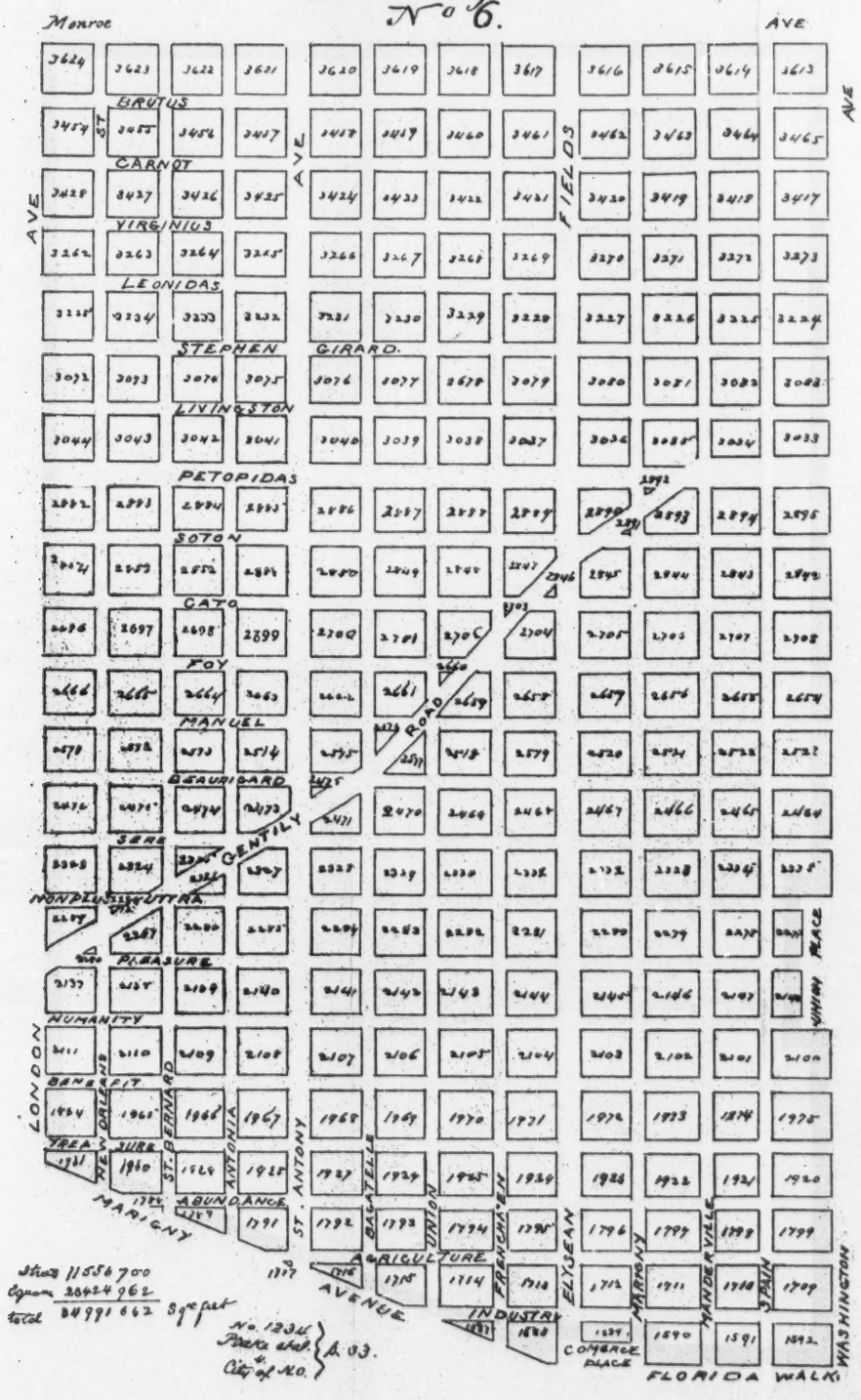
Area of Streets 7.173958
5th - Square 14 726816.
Total of Section 21.900772.

3rd Draining Dist. Sec. 5.



Area of Sts 10764340
" " Sq^r 22332212.
Total area 33.096452. Sq^r ft.

3d Draing. Dist. No 6.



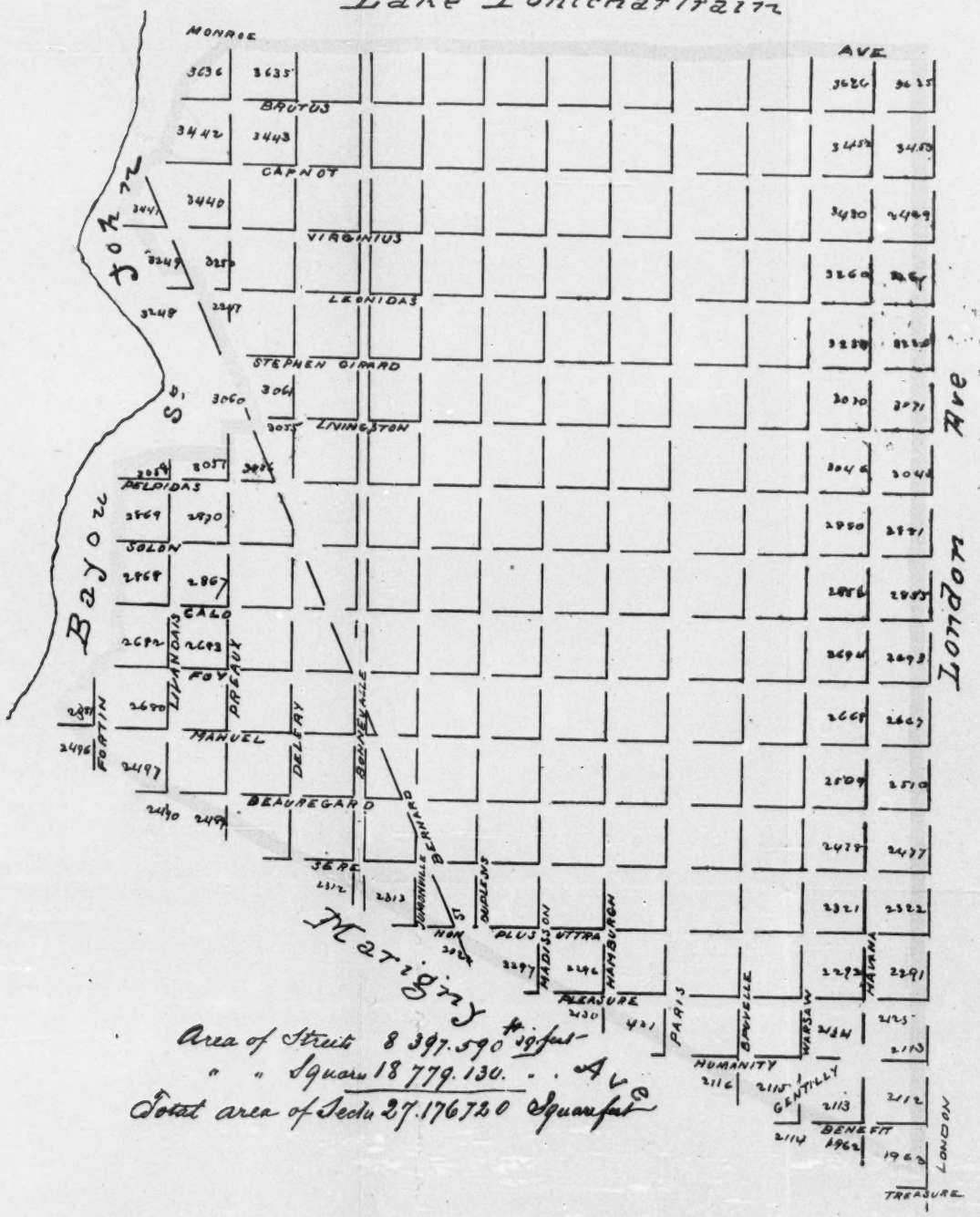
Streets 11556 700
Squares 28424 962
total 39991 662 Sq^re feet

No. 1234 Plats showing } A. 03.
City of N.O.

3rd Drain's
No 7

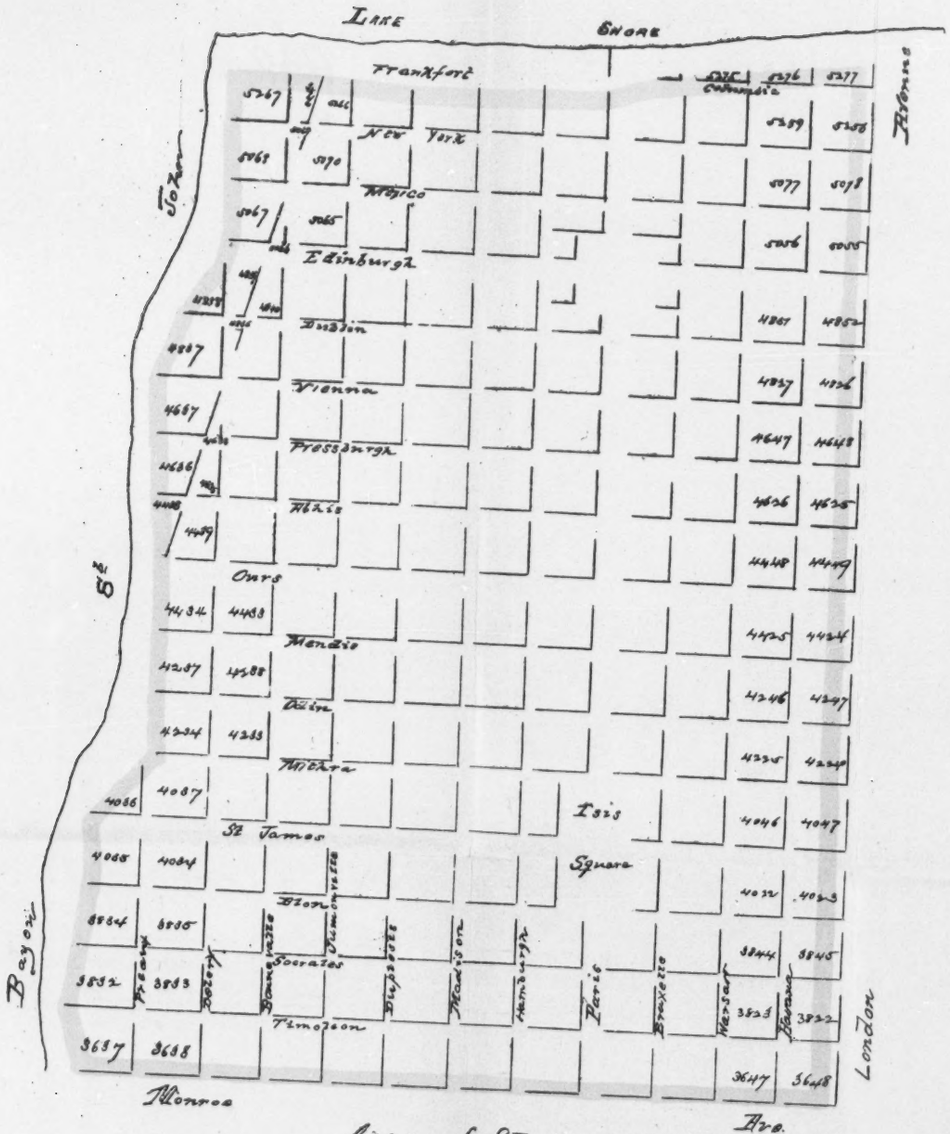
No. 1234
Plaquemine } ft. 34.
City of N.O.

Lake Pontchartrain


MONROE
AVE
BRUTUS
CAPNOT
VIRGINIUS
LEONIDAS
STEPHEN GIRARD
LIVINGSTON
PELOIDAS
SOLON
CALO
FOY
DREAUX
MANUEL
DELERY
BEAUREGARD
JERE
JOHNWELL
BERNARD
DURELLS
PLUS
OTTRA
MADISON
HANBURGH
PLEASURE
PARIS
BAYOU ST JOHN
MORTIGNY
ST CS
ST
ST
ST

No. 1234
Peake et al
v.
City of N.O. } ft 35

3rd Drainage District
No 8



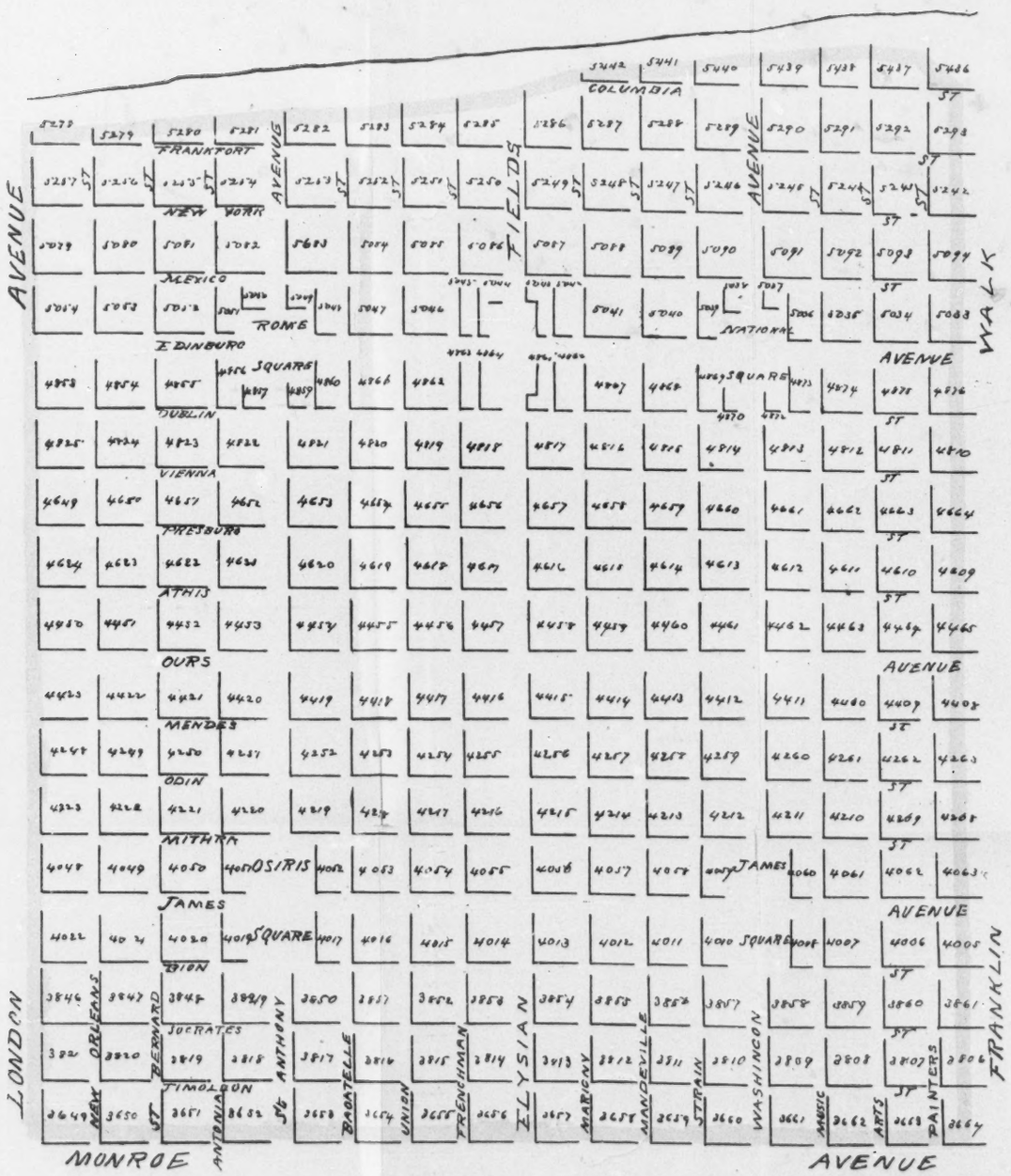
Area of Streets 8264010
Sqrs 15564100
Total area of Section 23828110

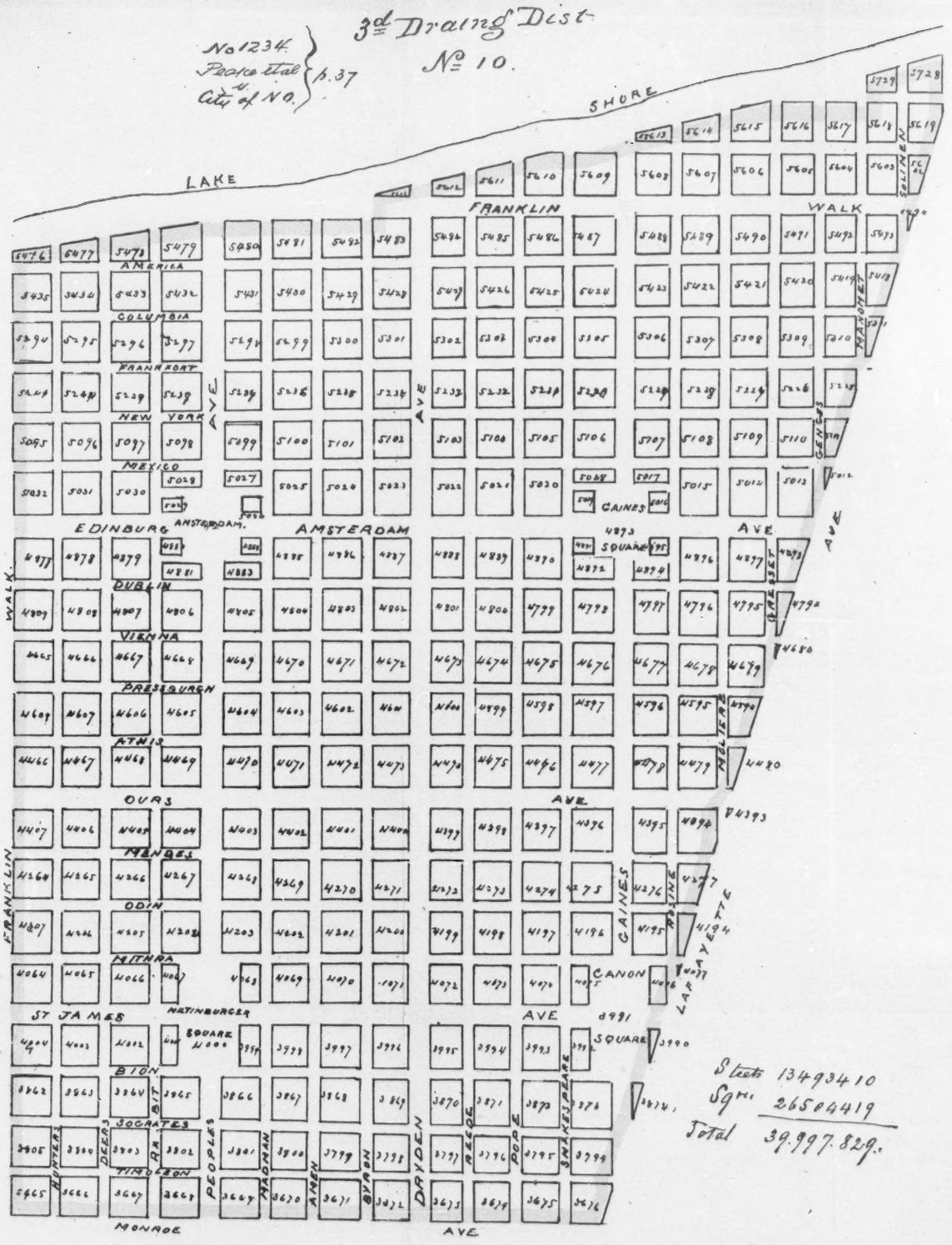
No. 1234
Recorded
City of N.J.
p 36

3rd. Draining Dist.

Sec. No 9

~~Streets~~ 12 9290 40
Squares — 24770978
Total area of Section 36700018




No 1234
Peace Hall
City of NO.
p. 37
3d Drainage Dist
No 10.
LAKE
SHORE
FRANKLIN
WALK
AMERICA
COLUMBIA
FRANKFORT
NEW YORK
MEXICO
EDINBURG
AMSTERDAM
DUBLIN
VIENNA
PRESBURGH
ATHIS
OURS
MENGES
ODIN
MITHRA
ST JAMES
BION
SOCRATES
TIMOLEON
MONROE
AVE
CAINES
SQUARE
MILTON
CANON
LAFAYETTE
DRYDEN
POPE
ALEPO
BYRON
HADNAN
ANEN
PEOPLES
HUNTERS
DEERS
RA
BIT
SNAKES
PARK
MAYONEY
GENERAL
Steets 13493410
Sqrs 26504419
Total 39.997.829.

Grand Recapitulation

OF THE

Fourth Draining District:

Recapitulation		Area of Streets	Area of Squares
Book	№ 1 ..... Square Feet	8713573,03	27630781,86
do.	№ 2	9389551,54	23484923,05
do	№ 3	7569537,36	42213735,61
do	№ 4	7305727,21	14400579,04
	Total	32978389,13	107730019,56
			32978389,13
Grand Total of Area in the 4th Draining District	Square Feet		140,708408,69

Compiled from Maps on file and from the Records of the Conveyance Office

New Orleans October 8th 1872

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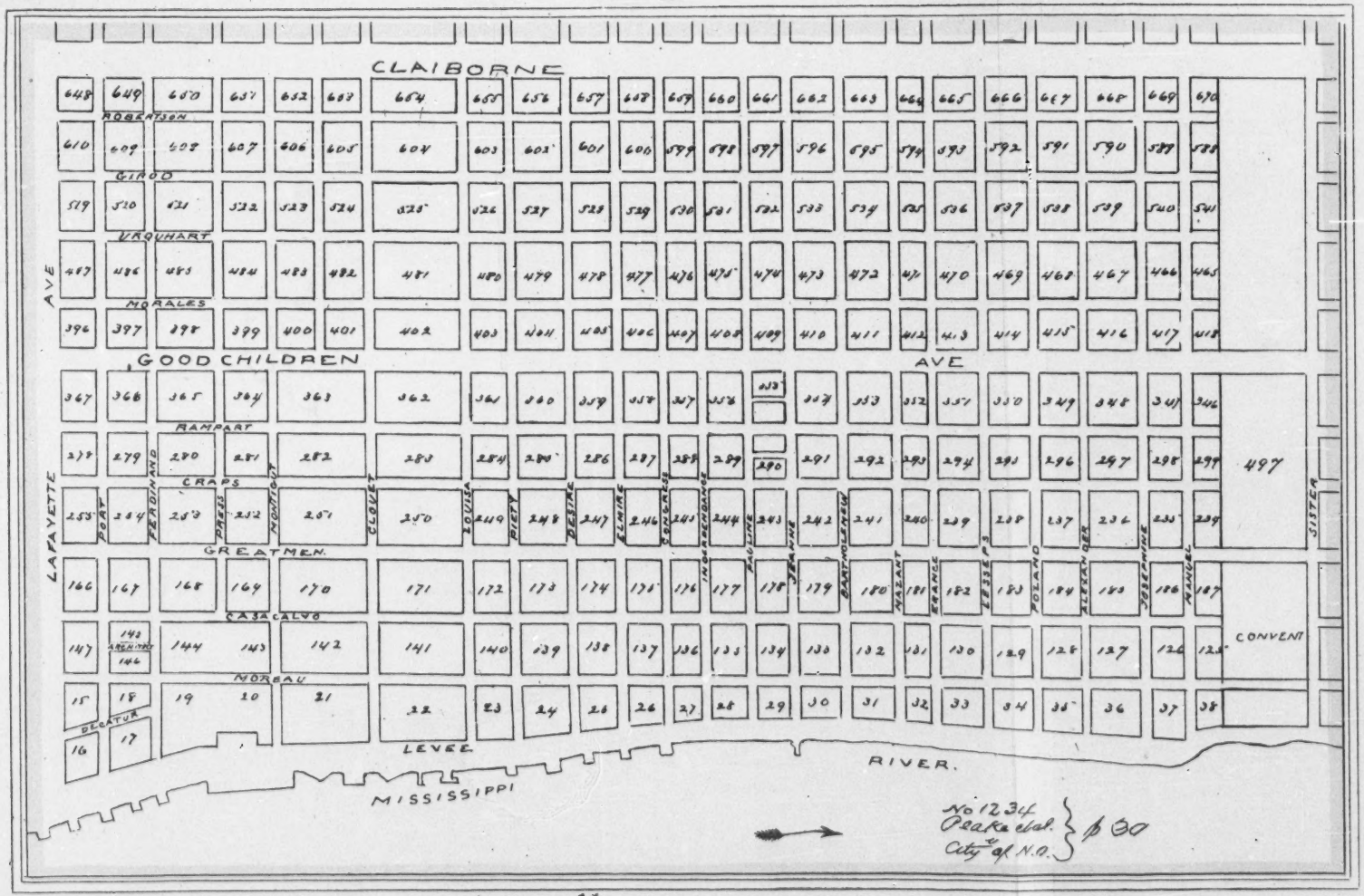
Peake et al.
vs.
City of N.O.
} p. 38

Surveyors Office

T. N. Peel

City Surveyor

No 1



Total area of Squares 27630781. 86.
" " " Streets 8713573. 03
grand total 36344354. 89

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Peake et al
City of N.O.
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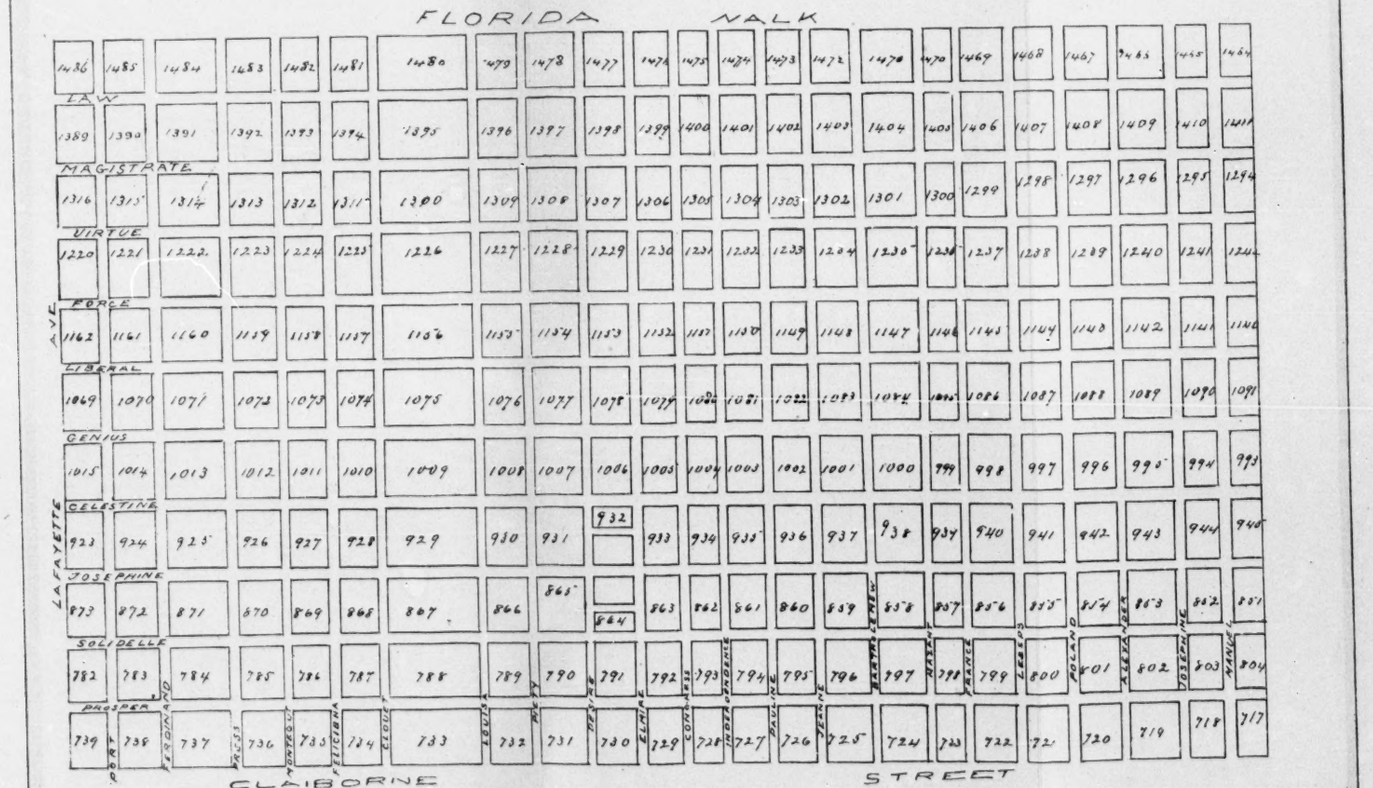
No 2.


FLORIDA
NALK
MAGISTRATE
VIRTUE
FORCE AVE
LIBERAL
GENIUS
CELESTINE
JOSEPHINE
SOLIDELLE
PROSPER
LAFAYETTE
CLAIBORNE
STREET
PORT
FERDINAND
ROCKS
MONTEGUT
FELICIANA
CLOUET
LOUIS
PIETY
POYDRAS
ELMIRE
CONGRESS
HOPE
DAUPHINE
BIENVILLE
BARONNE
TONTI
ROMAN
DERBIGNY
ROCHBLAVE
PAUL
ROCKS
ROCKS
ROCKS

No 3
Claiborne St
Claiborne
Robertson
Girod
Urquhart
Morales
Good Children
Rampart
Burgundy
Dauphin
Crealmen
Royal
Charters
Delaronde
LOUISIANA COTTON MAN'T
U.S. HOSPITAL
U.S. BARRACKS
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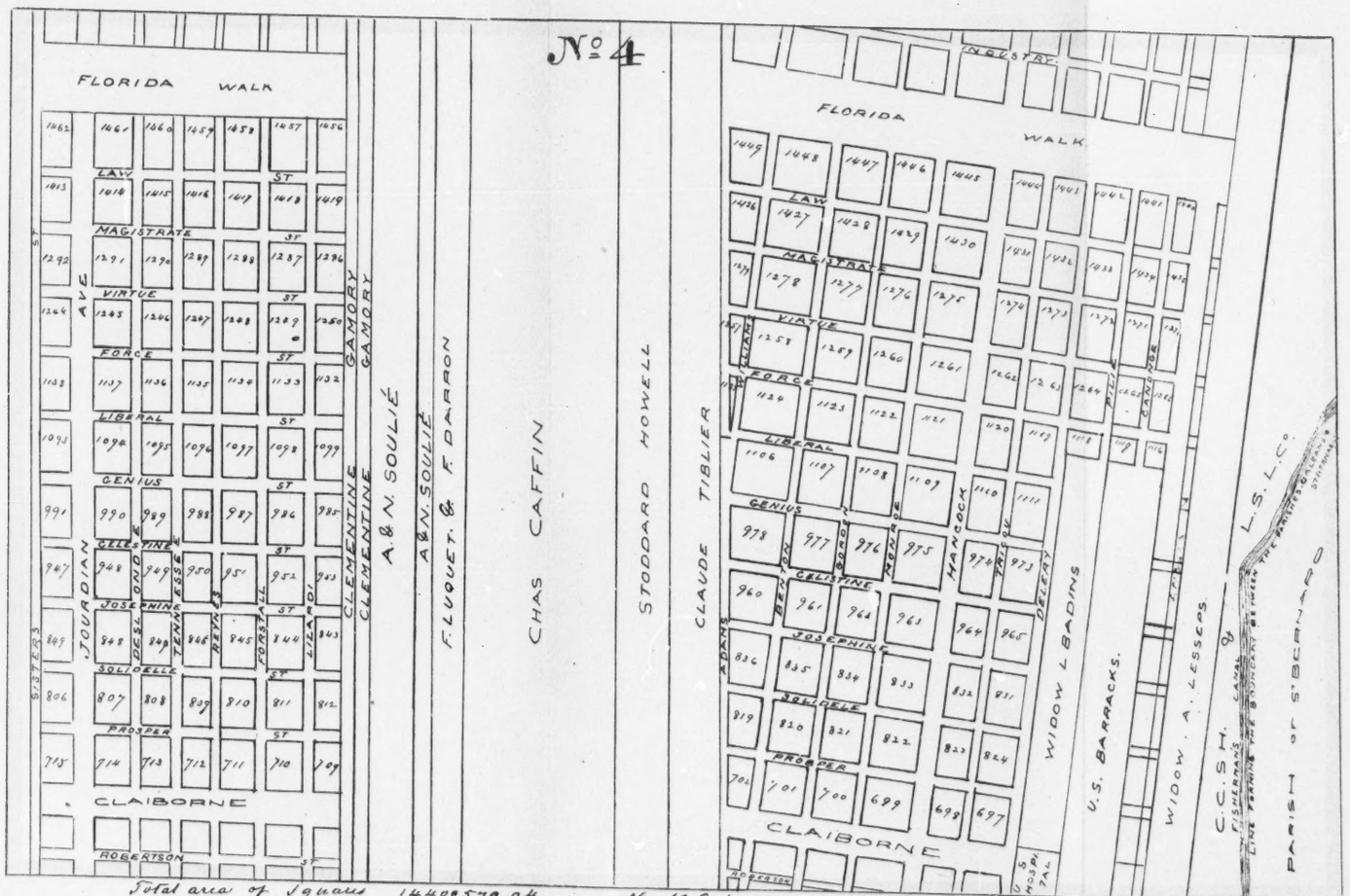
Total area of Squares. 42213735. 61.
" " Streets 7569537. 35
Grand total 49783272. 96



Total area of Squares 14408579.04
" " Streets 7305727.21
Grand Total 21706306.25

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Peake et al.
vs
City of N.O.
} P. 42.

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